

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC., Case No. 08-13555-scc

7 Debtor.

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10 United States Bankruptcy Court

11 One Bowling Green

12 New York, New York 10004-1408

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14 January 9, 2017

15 10:07 AM

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23 B E F O R E:

24 HON. SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 IN RE: RMBS Claims Estimation Trial

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1 P R O C E E D I N G S

2 THE COURT: Please have a seat.

3 How's everyone today?

4 Mr. Morrow, please come back.

5 (Pause)

6 THE COURT: We got some warmer weather. We get to
7 look forward to the gray pools of slush part of the winter.

8 (Laughter)

9 THE WITNESS: I know.

10 MR. ROLLIN: Good morning.

11 THE COURT: Good morning, Mr. Rollin.

12 MR. ROLLIN: I'm going to start passing out some
13 exhibit binders.

14 THE COURT: Sounds good.

15 (Pause)

16 THE COURT: Do you have one for Ms. Chu? Thanks.
17 Okay.

18 MR. ROLLIN: Your Honor, for orientation on the
19 binders, if I may there are two binders -- what I've handed
20 are a copy of the deposition transcript and two binders. We
21 may be toggling. I think we're likely to toggle between the
22 two binders. One primarily has loan materials as we talk
23 about loans and one has other exhibits.

24 THE COURT: Okay.

25 MR. ROLLIN: Okay.

1 THE COURT: Very good. Thank you.

2 MR. ROLLIN: I also have some exhibits that I may
3 have to hand up individually. I also may not. We'll just
4 have to see.

5 THE COURT: Very good.

6 MR. ROLLIN: Okay.

7 THE COURT: Okay. Mr. Morrow, as no surprise
8 you're still under oath.

9 CROSS-EXAMINATION, CONT'D.

10 BY MR. ROLLIN:

11 Q Good morning, Mr. Morrow.

12 A Good morning.

13 Q I would like to show you what we've marked as
14 identification as Plan Exhibit -- Plan Administrator Exhibit
15 908. It's also in your binder, the binder that's not the
16 loan documents.

17 MR. ROLLIN: If I may approach just to --

18 THE COURT: Sure.

19 MR. ROLLIN: This is the loan binder so this will
20 be full of documents.

21 THE WITNESS: Uh-huh. Okay.

22 MR. ROLLIN: This will be other documents.

23 BY MR. ROLLIN:

24 Q This particular exhibit I believe is very difficult to
25 see in hard copy, so it's on the screen and we can enlarge

1 it. And I've also brought you a magnifying glass.

2 A Well, how about the judge?

3 THE COURT: All right. Now that --

4 (Laughter)

5 THE COURT: -- that's a first.

6 THE WITNESS: That's a first?

7 THE COURT: That is the first time I've ever had a
8 magnifying glass. I've had a pool cue as a pointer.

9 MR. ROLLIN: This is a special case, Your Honor.

10 THE COURT: Seriously. This might be life-
11 changing.

12 (Laughter)

13 THE COURT: Except I don't know how it works.

14 MR. ROLLIN: You just set it right on it and
15 (indiscernible). We're not going to talk about the details
16 of any of the words that are on the page, so everybody can
17 be comforted by that.

18 BY MR. ROLLIN:

19 Q But, Mr. Morrow, I'll represent to you that this is a
20 -- an excerpt from your updated Exhibit D which you talked
21 about yesterday and which I believe is marked TRDX-1369.
22 Does that appear, in fact, to be an excerpt of the number of
23 pages from your updated Exhibit D?

24 A Yeah. It's not the same as though that was in the TX.
25 They're different pages.

1 Q That's correct. And what we've done here, you'll see
2 if you look at Column I, is we had filtered the large
3 document which is many, many pages and in Column I where it
4 says disagree we've included all of the entries where you
5 disagreed with the trustees. Okay?

6 A Yes.

7 Q And what you'll note, if you scroll over to the -- and
8 there were a number of instances, I think you testified
9 yesterday, 66 instances in which you disagreed with the
10 trustees' loan level determine -- claim level
11 determinations, correct?

12 A Yeah. Out of 891 I think.

13 Q Right. And if you scroll over to the column that says
14 Morrow notes --

15 A Yes.

16 Q -- and we've highlighted on the screen for you, what
17 you can see is that for the overwhelming majority of
18 instances in which you disagreed with the interpretation --
19 I'm sorry -- in which you disagreed with the claim level
20 conclusions of the trustees, rather than writing specific
21 notes about your analysis you wrote NA for not applicable --

22 A That's -

23 Q -- right?

24 A -- incorrect. That -- you have to go back to the notes
25 on the prior page before the -- well, I can't see it on this

1 page. Can you scroll back, please?

2 Q Sure. Absolutely.

3 A To J, those are my notes of exactly why I disagreed. I
4 did not restate my notes again. I just put NA because I
5 already disagreed with it.

6 Q Okay. So the extent to which and the bases on which
7 you disagreed is in Column J, correct?

8 A Yes.

9 Q Understood. And other than the information that's
10 contained in Column J you have no further information about
11 what aspect of the trustees' analysis you disagreed with,
12 right?

13 A No. If I disagreed I disagreed and I said why.

14 Q Right. And what I'm trying to confirm is that we can
15 rely on the notes in Exhibit J as a complete statement of
16 your basis for disagreeing?

17 A If there's an N/A over it and it was a disagree
18 originally, yes.

19 Q Thank you.

20 Now one of the opinions you were engaged to give
21 was as to the reliability of Mr. Aronoff's process, right?
22 You testified about that yesterday?

23 A Yes.

24 Q But you did not in the course of considering the --
25 that process you did not review any of the instructions that

1 were provided to the five re-underwriting firms, did you?

2 A NO. They would have been the same as what -- re-
3 underwriting, I am familiar with re-underwriting and they
4 re-underwrote the loans to the industry standards of re-
5 underwriting. Their instructions were that.

6 Q Well --

7 A Based on Mr. Aronoff's report.

8 Q You don't know what instructions were given to the five
9 re-underwriting firms, do you?

10 A I just said that I did based on Mr. Aronoff's report.
11 Working with them I know that they only underwrite to
12 industry standards. Industry standards are the way he
13 underwrote, the same way I underwrite.

14 Q This extent of what you know about the instructions
15 that they were given was that they were to underwrite to
16 industry standards?

17 A Based on industry standards, yeah.

18 Q Did you receive copies of any materials that were
19 provided to the five re-underwriting firms that contained
20 any guidance or instruction with respect to this particular
21 review project?

22 A Well, I haven't worked with them -- I have never seen a
23 -- I have never given them instructions other than verbally,
24 so it was never in writing. So I wouldn't expect that it
25 would. But re-underwriting is according to industry

1 standards and they do it that way as I explained.

2 Q Is that another way of saying, no, I did not review any
3 of the instructions or guidance that was provided to the
4 review firms for this particular project?

5 A Other than what Mr. Aronoff said in his expert report,
6 no.

7 Q Okay.

8 MR. ROLLIN: Can I apologize for a moment? My
9 real time is not working. Can we --

10 UNIDENTIFIED SPEAKER: Neither is ours. Sorry.

11 MR. ROLLIN: May I, Your Honor?

12 THE COURT: Yes, please.

13 (Pause)

14 MR. ROLLIN: Okay. Thank you.

15 UNIDENTIFIED SPEAKER: Thank you. Sorry.

16 THE COURT: Thank you.

17 UNIDENTIFIED SPEAKER: We got it.

18 BY MR. ROLLIN:

19 Q And, Mr. Morrow, you did not review whatever internal
20 processes or procedures were implemented for purposes of
21 this review within the five re-underwriting firms, did you?

22 A No. That was not -- it was -- I was charged to do the
23 reliability of their work.

24 Q You were charged to do an analysis of the reliability
25 of their work, but you did not review any internal processes

1 or procedures that were implemented in connection with this
2 case?

3 A No. It wouldn't be necessary.

4 Q And you did not --

5 A That's not how you do quality control.

6 Q And you did not review their particular quality control
7 procedures within the five re-underwriting firms?

8 A What their standard is or -- I don't understand your
9 question.

10 Q What they did in this case?

11 A Well, based on Mr. Aronoff's report they did what they
12 do standard which is they -- they do quality control on ten
13 percent of the loan. So I did not go into the other side.
14 No.

15 Q So you understand that within the re-underwriting firms
16 they did quality control on ten percent of the loans?

17 A That's what -- working with them that's what they do.

18 Q But you did not review the particular quality control
19 procedures that were in place for this case?

20 A No. That's not what my reliability is. My reliability
21 is what is their conclusions as far as material breaches.

22 Q So you -- your reliability analysis was based on their
23 conclusions, not on their process?

24 A No. It's based on the process because the process is
25 the same throughout the industry for re-underwriting of

1 loans. And I did the process the way that they would do the
2 process because it's a standard within the industry and
3 arrived at the conclusions based on that, or the opinions
4 based on that.

5 Q You didn't interview any of their people, right?

6 A When?

7 Q Anytime in connection with your engagement in this
8 case, the day that you were hired until today, you haven't
9 interviewed anybody at the re-underwriting firms, right?

10 A No. I interviewed everybody at ICG which is a re-
11 underwriting firm and they worked with me.

12 Q You understand, sir, that I'm speaking of the five re-
13 underwriting firms that were engaged by the trustees in the
14 course of (indiscernible), right?

15 A I have not talked to any of them and I wouldn't.
16 That's not -- you -- if you start talking to them and start
17 talk --

18 THE COURT: Mr. Morrow, I'm going to stop you
19 because --

20 THE WITNESS: Yeah.

21 THE COURT: -- we're going to be here for a very
22 long time. This is a cross-examination and Mr. Rollin is
23 entitled to ask you questions that call for yes or no
24 answers and for the most part short answers. So I would
25 appreciate it if you would attempt to answer his questions

1 yes or no and not engage in further narrative unless you
2 feel that it's necessary to fully clarify your answer.

3 If there is anything that needs to be -- that your
4 -- that counsel for the trustees feels is necessary to bring
5 out, they can do that when they get up and conduct your
6 redirect examination. All right.

7 THE WITNESS: Okay, Your Honor.

8 THE COURT: Okay. Go ahead, Mr. Rollin.

9 BY MR. ROLLIN:

10 Q Your answer to my question was, no, you didn't
11 interview anybody at the re-underwriting firms?

12 A Correct.

13 Q You didn't interview anybody at Duff & Phelps, did you?

14 A Not concerning this. Not concerning that area.

15 Q You didn't review whatever processes were in place at
16 Duff & Phelps for this case?

17 A No, not other than the report (indiscernible).

18 Q You didn't interview Mr. Aronoff in forming the
19 opinions set forth in your report?

20 A No.

21 Q You understand, sir, that the claim population has been
22 reduced by the trustees between the protocol population and
23 what's currently at issue in this case, correct?

24 A That's my understanding.

25 Q But you did not analyze any of those withdrawn claims,

1 did you?

2 A Yes, I did.

3 Q Okay. You analyzed the -- from within the population
4 of 90 plus thousand loans?

5 A My understanding is the title insurance were withdrawn
6 and so I have reviewed those.

7 Q Other than -- other than title insurance claims, then,
8 you have not reviewed any of the claims that were withdrawn
9 between those that were asserted in the protocol and those
10 that are at issue here?

11 A Correct.

12 Q And as the person auditing the trustees' claim process
13 you didn't think you could glean relevant --

14 THE COURT: Mr. Rollin, could you keep your voice
15 up? I think people in the back are having a hard time
16 hearing you.

17 MR. ROLLIN: Sure. Yeah. I apologize for that.

18 BY MR. ROLLIN:

19 Q Sir, as the person auditing the trustees' claim process
20 you did not think that you could glean relevant information
21 from a review of the claims that the trustees' withdrew?

22 A No.

23 Q You understand, don't you, that the outcome of your
24 review in terms of the number of agrees and disagrees could
25 have been different had you included in the population

1 claims that had been withdrawn, right?

2 A Not necessarily because I don't know what the claims
3 are. I don't know if they're valid and they decided to
4 withdraw them or not.

5 Q My question simply was if your 600 loan sample had been
6 drawn from the larger protocol population and not the more
7 narrow Aronoff population. you may have a different outcome.
8 Would you agree with that?

9 A Of course.

10 Q Now the trustees asserted claims for missing documents,
11 correct?

12 A Yes.

13 Q And Judge Chapman asked you about the missing documents
14 claims yesterday, right?

15 A Yes.

16 Q And you testified in your deposition that your review
17 of the -- that you did a careful evaluation with respect to
18 missing documents. Do you remember that?

19 A We went through the complete file. Yeah.

20 Q But as you told the Court the careful evaluation that
21 you did was you looked through the file and if the document
22 wasn't there you assumed that it was not there at
23 origination, correct?

24 A That's the way the industry works. Yes.

25 Q Regardless of what the industry does, that's certainly

1 what you did, right?

2 A I -- yes.

3 Q And that's what the trustees did also in their process
4 of reviewing claims?

5 A I don't know. I -- the trustees, yes, that -- you're
6 right.

7 Q And you believe that it's the plan administrator's
8 burden to prove the document was not missing the
9 origination, don't you?

10 A Correct.

11 MR. ROLLIN: Can we put up Plan Administrator 909?

12 BY MR. ROLLIN:

13 Q Will you please turn to Plan Administrator 909 in your
14 binder? It's another small one. I apologize. And I'll
15 represent to you that 909 is another filtering of your
16 updated Exhibit D with certain loans on it. Do you see
17 that?

18 A Yes.

19 Q And these are also disagrees, but the specific basis on
20 which you disagreed was because you found the missing
21 document in the loan file. Does that appear correct to you?

22 A Yes.

23 Q And I'll represent to you, but you're certainly welcome
24 to count, that there are 14 instances in which you found an
25 allegedly missing document in the loan file; is that a fair

1 --

2 A Yes.

3 Q Correct?

4 A I don't -- I accept your statement.

5 Q So notwithstanding multiple layers of quality control,
6 both at the re-underwriting firms and within Duff & Phelps,
7 they made at least these 14 claims alleging a missing
8 document when, in fact, the document was not missing, right?

9 A Yes.

10 Q I would like to turn and talk about misrepresentation
11 claims. You and your team reviewed certain of the
12 misrepresentation claims that were asserted by the trustees,
13 correct?

14 A Yes.

15 Q You did not get -- and your team is the team at ICG,
16 right?

17 A And myself, yes.

18 Q You did not give any written instructions to your team,
19 did you?

20 A No.

21 Q Instead what you did was you each reviewed the same 15
22 loans to see if you came out the same way in the analysis?

23 A Yes.

24 Q Now in the course of the review there were
25 disagreements between you and ICG, weren't there?

1 A Sometimes.

2 Q And in those instances you overruled them?

3 A No, not necessarily. I made the final decision.

4 Q I think you testified in deposition, he who testifies
5 wins, and that's a reference to you being the testifier and,
6 therefore, you get to decide?

7 A I get to decide. Right. They may have differed with
8 me. We discussed the difference and I make the decision as
9 to whether they're valid or not. That's what I do.

10 Q Now when performing your review you knew what the
11 claims were that were asserted by the trustees, right?

12 A Yes.

13 Q And so did your team at ICG, right?

14 A Yes.

15 Q And so they had the trustees' position and they had the
16 debtors' position, right?

17 A Yes.

18 Q And when I say they I mean to include you had that as
19 well, right?

20 A Correct.

21 Q And so your review of the claims was not blind in any
22 way?

23 A We had knowledge of what the claims were. Yes. We
24 didn't underwrite to that. Yes.

25 Q You had knowledge of what the claims were and what the

1 positions of the parties were at the time that you conducted
2 the review?

3 A Yes.

4 Q And so did ICG?

5 A Yes.

6 Q Now when you were reviewing the claims you wanted
7 access to all third party information that was collected by
8 the re-underwriters, didn't you?

9 A If it was applicable, yes.

10 Q You would not be happy if you did not receive all of
11 the third party information that was collected by the re-
12 underwriters, right?

13 A My mood I don't --

14 (Laughter)

15 A I would expect to receive all third party info --

16 Q So you --

17 A -- stuff that is relevant.

18 Q In fact, Mr. Morrow, you would not offer an independent
19 opinion if you didn't have access to all of the third party
20 information that was collected by the re-underwriters, isn't
21 that right?

22 A If it's relevant, yes.

23 Q And if -- if you didn't see it, you know, you can't
24 assess whether it's relevant or not?

25 A I have a tough time answering that question because the

1 -- I just have a tough time answering the question.

2 Q Well, you understand that the third party information
3 was run for the particular borrowers at issue, correct?

4 A Third party information is sought on the borrower.
5 Yes.

6 Q So let's assume for a moment that a re-underwriter
7 looks up DataVerify and Merz and Cydex. You with me so far?

8 A Yeah.

9 Q But they only send you the Merz, right?

10 A Yes.

11 Q You don't know what's in the other two documents,
12 right?

13 A If they ran the other two and the name did not come up,
14 there would not be a report. So they would -- reports are
15 only generated if the name of the borrower is involved. It
16 isn't re -- it isn't generated at all. It doesn't even come
17 up as it. So you wouldn't have a third party report for the
18 other two because they weren't present in that
19 (indiscernible).

20 Q That assumes that there was no result. But let's
21 assume for a moment that there was a result and there were
22 multiple documents for a given borrower. Right. You with
23 me?

24 A Yeah.

25 Q You would expect to see all of those, wouldn't you?

1 A And I did. They were in the file. I had some in the
2 file that had their names that were not detrimental or were
3 in the file besides. So I don't -- you know --

4 Q If they didn't send it to you you would have no idea
5 whether it existed or not?

6 A If they didn't send it to me I don't have an idea of
7 what it is. I only know the -- what -- how they run their
8 business and what they --

9 Q And my previous question was you would not offer an
10 independent opinion without access to all of the third party
11 information collected by the re-underwriters, right?

12 A If it was relevant.

13 (Pause)

14 Q Will you take a look at your deposition, page 134? I'm
15 going to be looking at lines 10 through 17. It's on the
16 screen if that's helpful as well.

17 A Yes.

18 Q And the question that you were asked in the deposition
19 at line 10 was:

20 "Would you have been willing to offer an
21 independent breach review opinion without access
22 to the third party information collected by the
23 trustees' loan reviewers?"

24 And after an objection you answer: "Probably not
25 because the breaches, so many of the breaches are based on

1 third party information." That was through line 23.

2 THE COURT: Yeah. Mr. Lieberman.

3 MR. LIEBERMAN: We object. This isn't
4 inconsistent with the testimony he's given.

5 MR. ROLLIN: It actually is, Your Honor. He's --
6 he has now qualified to say that he only wants the
7 information if relevant.

8 THE COURT: If it's relevant. It's -- I agree.
9 You can keep going.

10 BY MR. ROLLIN:

11 Q That was the question that you were asked and that was
12 the answer that you gave?

13 A That --

14 Q Right?

15 A Yes. As I said, relevant.

16 Q And you didn't ask Mr. --

17 THE COURT: Wait. Wait. Wait. Wait. Wait.
18 Wait.

19 MR. ROLLIN: Thank you, Your Honor.

20 THE COURT: Try it again.

21 BY MR. ROLLIN:

22 Q That was the question that you were asked in deposition
23 and that was the answer that you gave?

24 A Except I said it as a hypothetical, and you said a
25 hypothetical thing. So it's not a complete -- it wasn't

1 complete as to whether it was there and I said, probably
2 not. So the probably not is relevance.

3 Q So when you were asked under oath in your deposition
4 whether you would be willing to offer an independent breach
5 review opinion without access to the third party information
6 collected by the trustees' loan reviewers and you said,
7 probably not, what you really meant was only if it was
8 relevant?

9 A Correct, which I got.

10 Q Did you have a chance to review -- you didn't make any
11 corrections to your deposition transcript in the months
12 since you gave the deposition, right?

13 A No.

14 Q Now did you ask at any point Mr. Aronoff whether the
15 instructions to the loan reviewers were to provide all third
16 party information collected for the borrowers?

17 A I never talked to Mr. Aronoff.

18 Q So the answer is no?

19 A Yes.

20 Q I would like to show you a clip, a video clip.

21 THE COURT: Hold on. Hold on. You want to give them a
22 cite, please.

23 MR. ROLLIN: Yeah. Thank you. I do not have the
24 cite (indiscernible).

25 (Pause)

1 MR. ROLLIN: Thank you.

2 This is Mr. Aronoff, page 84, line 20, page 85,
3 line 9.

4 THE COURT: Thank you. Okay.

5 (Video clip played)

6 BY MR. ROLLIN:

7 Q So, sir, had you asked Mr. Aronoff he would have told
8 you that the re-underwriting firms should to have sent all
9 third party information --

10 A I don't read his --

11 Q -- correct?

12 A I don't -- sorry. I don't read that as his. I read it
13 as a fact that they're supposed to.

14 Q You think that you interpret what Mr. Aronoff is saying
15 as it being we're supposed to?

16 A Correct.

17 Q If he had told you otherwise that, in fact, they were
18 not supposed to, that would have affected your willingness
19 to render an independent breach review opinion, wouldn't it?

20 A Yes, because the reliability is the work of the
21 underwriting house.

22 Q Right, because the third party information might --
23 third party documents might have information that's
24 inconsistent with other third party information that you're
25 reviewing and that would be important if you're trying to do

1 a quality review, don't you agree?

2 A Yes, and that should have been in the file. That would
3 have been in the file actually.

4 Q Well, you don't know that because you didn't ask
5 anybody at the re-underwriting firms or Mr. Aronoff whether
6 that was the case, right?

7 A Other than my knowledge of the underwriting house, no.

8 Q In fact, if there was inconsistent information in the
9 files that you reviewed, you would actually disagree with
10 the trustees on their conclusion, right?

11 A Yes. That's (indiscernible).

12 Q I'm sorry. Your answer, sir.

13 A Yes. That's why we had a disagreement on 14 of the
14 documents. We found documents in there.

15 Q Well, separate and apart from finding documents, if you
16 found inconsistent information; that is, information that is
17 inconsistent with the claim being made by the trustees you
18 would disagree with the trustees, right?

19 A Yes, I would have.

20 Q Let's talk about third party sources for a moment. You
21 take DataVerify as accurate, correct?

22 A It's an accepted source in the industry. Yes.

23 Q Slightly different question. You take DataVerify as
24 accurate, right?

25 A I don't -- we -- I don't characterize anything as

1 accurate. I characterize whether it's accepted in the
2 industry. I may have said accurate, but I won't say it's
3 accepted as being accurate in the industry.

4 Q Your deposition, sir, page 463, line 25, going onto the
5 next page: "Question" -- tell me when you're there. Sorry.
6 I didn't mean to go too fast.

7 (Pause)

8 A Yes.

9 Q "Question: Right. But the narrow point is that you
10 assume that the information provided by DataVerify is
11 accurate for purposes of your loan review?" "Answer:
12 Yeah." I --

13 A Correct.

14 Q I asked you that question and you gave me that answer?

15 A Yes.

16 Q So you do assume that the information in DataVerify is
17 accurate?

18 A Correct.

19 Q And you assume that the information in Merz is
20 accurate, right?

21 A Yes.

22 Q Even though they both say that the information should
23 be independently verified, right?

24 A They make a disclaimer on there for legal purposes.
25 Yes. So, yes.

1 Q But you don't independent -- independently verify with
2 third party sources, do you?

3 A Not in the industry, no, not on a re-underwriting.

4 Q You don't and the trustees didn't, right?

5 A Correct. That would be left to the PA.

6 Q Meaning it is the burden of the plan administrator to
7 confirm the accuracy of the evidence sources cited by the
8 trustees in support of their claims in this case, correct?

9 A Or disprove them. Yes.

10 Q You take audit credit reports as accurate, also, right?

11 A Yes.

12 Q But you understand there are errors. There can be
13 errors in audit credit reports, right?

14 A Yes.

15 Q And, again, it's the plan administrator's burden to
16 either prove or disprove the accuracy of that information
17 source as well?

18 A That's the industry. Yes.

19 Q That's what you did and that's what the trustees did?

20 A Was that a question?

21 Q Yes. That's what you did in your analysis and that's
22 what the trustee did in theirs?

23 A Right.

24 Q You required that the Plan Administrator prove or
25 disprove the accuracy of an audit credit report is advanced

1 in support of a claim made by the trustees in this case?

2 A No, I didn't say that. I said that it - the -- if the
3 plan administrator' are the ones if they want to disprove
4 it, they have that obligation, trustee or -- or my re-
5 underwriting. What's in the loan files is in the loan file.

6 Q Even though you understand that audit credit reports
7 can contain errors, right?

8 A Yes.

9 Q There's another binder that's the loan documents. I
10 would ask you to take a look at that one, please. And if
11 you'll go to Plan Administrator Exhibit 911 and let me know
12 when you're ready, I would appreciate it.

13 (Pause)

14 A Yes.

15 Q And you've taken a moment to peruse the document?

16 A Yes.

17 Q And Plan Administrator 911 is an excerpt from a single
18 loan from your updated exhibits, correct?

19 A Yes.

20 Q And if you look at the first page, Column D, just to
21 confirm the loan number ends 3117, right?

22 A Yes.

23 Q And in -- sorry, in D what you'll see is this is a
24 claim for misrepresentation of income, correct?

25 A Yes.

1 Q And the factual basis alleged for this claim is that a
2 person who identifies herself as a vice-president of a
3 company misrepresented her income when she wrote on a loan
4 application that it was \$8,865, right?

5 A Per month. Yes.

6 Q Per month. Yeah. And the claim is based on two
7 sources identified by the trustees, BLS and a W-2, correct?

8 A Correct.

9 Q Please turn to the next exhibit --

10 MR. LIEBERMAN: Your Honor, I --

11 THE COURT: Yes.

12 MR. LIEBERMAN: -- have an objection. The
13 description actually says W-2 and the tax return.

14 MR. ROLLIN: Oh, sure. If that's what it says --

15 THE COURT: All right. Thank you.

16 MR. ROLLIN: -- that's fine.

17 BY MR. ROLLIN:

18 Q So BLS, tax return and W-2, right?

19 A Yes.

20 Q Okay. And if you'll turn to Plan Administrator 912
21 you'll find the claim package for this loan, correct?

22 A Yes.

23 Q Would you please turn to page 16 of the exhibit?

24 (Pause)

25 Q Are you there?

1 A Yes.

2 Q Page 16 is the beginning of the loan application?

3 A Yes.

4 Q And if you look at the signature block at the end
5 you'll see this loan was originated in July of 2006, right?

6 A That would be on which page?

7 Q Page --

8 A 19.

9 Q -- 19 of the exhibit. Yes. Yes. And if you turn to
10 page 26 of the exhibit you'll see this is the first page of
11 the BLS printout collected by the trustees' re-underwriter,
12 right?

13 A Yes.

14 Q All right. Can you turn, please to -- do you have Plan
15 Administrator 132 there?

16 (Pause)

17 A No.

18 Q It might be in the other binder. Just give me one
19 second. It is. In the other binder it's the very first
20 exhibit.

21 (Pause)

22 Q Are you there?

23 A Yes.

24 Q And Plan Administrator 132 is a document titled survey
25 methods and reliability statement for the May 2016

1 occupational employment statistics survey. Do you see that?

2 A Yes.

3 Q Now this is a document published by BLS, right?

4 A Bureau of Labor and Statistics. Yes. Every year.

5 Q And you understand this document describes the
6 reliability and limitations on the use of BLS, right?

7 A As of May of 2016, yes.

8 Q And although you used BLS for misrepresentation claims,
9 you've never actually reviewed publications that describe
10 how to properly use BLS, right?

11 A How it's used in the industry. I know how it's used in
12 the industry. I don't know if I had specific publications
13 regarding it. I've read an awful lot of articles and I may
14 have, I may not.

15 Q Let me show you a piece of your deposition. This will
16 be at page 435, line 20 -- sorry, 345, line 20 to 348, 16.
17 I'm going to show it to you on the video.

18 (Video clip played)

19 Q I asked you those questions and you gave me those
20 answers?

21 A Yes.

22 Q Now in any event even though you don't review BLS
23 documents on how BLS is supposed to be used, you do know
24 that BLS has limitations, right?

25 A Yes.

1 Q You know that it doesn't give the income for any
2 particular borrower, right?

3 A Correct.

4 Q It's just an indicator of income?

5 A It's an indicator of what -- for the -- for a specific
6 geographic area and occupation.

7 Q It doesn't give the total compensation?

8 A No, it does not. There are certain things that it
9 eliminates.

10 Q Ten -- when you look at the 90th percentile ten percent
11 of all wage earners, even if you've correctly identified the
12 geography and the occupation make more than the 90th
13 percentile by definition, right?

14 A Yes.

15 Q And how much more above the 90th percentile you don't
16 know?

17 A Correct.

18 Q The survey covers a three-year period not a one-year
19 period, right?

20 A Yes. It's much more conservative. Yes.

21 Q Now referring back to the loan application in this
22 case, you can go back to the loan document binder in PA-912.

23 (Pause)

24 Q Are you there?

25 A You want me to go to the front page? Yes.

1 Q Plan Administrator Exhibit 912 in the loan level
2 binder, and specifically page 17 of the exhibit.

3 A Yes.

4 Q We're back at the loan application, correct?

5 A Yes.

6 Q And what the borrower identifies in her loan
7 application that she is the vice-president of the company,
8 correct?

9 A Correct.

10 Q And will you go Plan Administrator 938, just a few tabs
11 back?

12 A The number again?

13 Q 938.

14 A 938. Yes.

15 Q You see that that is a verification of employment that
16 was done at origination?

17 A It's a verification that she is employed there. Yes.

18 Q And it's a verification that she's employed as a vice-
19 president program director, right?

20 A Yes.

21 Q And now this isn't in the claim package, is it, sir?
22 This is in the loan file. You can confirm. You have the
23 claim package at 912.

24 A I will take -- it probably isn't because it wouldn't be
25 relevant. Yes.

1 Q It would not be relevant to the trustees' analysis that
2 a verification of employment was conducted at origination
3 which identified the person, the borrower as being a vice-
4 president program director. Is that your testimony?

5 A Yes, because that information is already on the
6 application and also on the tax return.

7 Q So this is just confirmatory that she's a vice-
8 president?

9 A Yes.

10 Q Okay. If you go back to the BLS which is Plan
11 Administrator 912, I'm going to focus you on page 30 of the
12 exhibit.

13 (Pause)

14 Q Are you there?

15 A Yes.

16 Q That's the output from the re-underwriting firm's use
17 of BLS for this borrower, right?

18 A It's one of the proofs on the income. Yes.

19 Q Just to very clear in the record this is the output
20 from the re-underwriting firm's use of BLS for this
21 borrower, correct?

22 A Yes. Yes. I understand. Yes. I'm sorry. I didn't
23 understand the question. Yes.

24 Q And what they did was they input the geography which is
25 New York, White Plains. Do you see that section?

1 A Yes.

2 Q And then they inputted occupation. Do you see that?

3 A Yes.

4 Q And the occupation that they used was first line
5 supervisors/managers of office and administrative support
6 workers, correct?

7 A Yes.

8 Q For a borrower whose loan application and origination
9 VOE says that she's the vice-president of the company,
10 right?

11 A Correct.

12 (Pause)

13 Q And you don't know one way or the other whether this
14 particular borrower, whether in her case vice-
15 president/program director is the same thing as a first line
16 supervisor/manager of office and administrative support
17 workers, do you?

18 A Based on my experience in doing this kind of
19 underwriting I would put her in that category.

20 Q So -- okay. You would take a person who has identified
21 herself as a vice-president and whose origination
22 verification of employment has identified her as vice-
23 president of a company and you would input first line
24 supervisors/managers of office and administrative support
25 workers in BLS to determine whether there's a

1 misrepresentation of income?

2 A That --

3 Q That's your practice?

4 A That was the position that is best representative of
5 her type.

6 Q Sir, if you could answer my question. That is your
7 practice, to take a woman who is a vice-president of a
8 company and to insert in BLS that she is a supervisor of
9 office and administrative support workers, right?

10 A The reason I can't answer your question like that is
11 because if you say that a person who -- with her company
12 that she works at is that type of company, yes. If you work
13 for an engineering company I may or may not, or if it's a
14 thing -- so it's not -- you have to evaluate the total
15 person.

16 Q What type of company is this?

17 A It appears to be a administrative company, just like
18 the title here, the administration, and that's what it
19 appears to be.

20 Q There's zero factual basis for the statement that you
21 just made, right?

22 A Since I don't have the whole loan file I can't say one
23 way or the other. I -- this is the best choice for this
24 person.

25 Q Did you include any notes anywhere in your analysis

1 that said, notwithstanding the fact that this person is
2 clearly the vice-president of a company, the nature of this
3 business is such that it is, as you said a moment ago, an
4 administrative company and, therefore, she's actually a
5 supervisor of office and administrative workers?

6 A Can you ask the question again? I'm sorry.

7 Q Sure. Did you include any notes anywhere in your
8 analysis that said, notwithstanding the fact that this
9 person is clearly the vice-president of a company, the
10 nature of this business is such that it is, as you said a
11 moment ago, an administrative company and, therefore, she is
12 actually a supervisor of office and administrative workers?

13 A No. We already had -- no.

14 Q And you don't -- sir, you don't know what this company
15 is?

16 A No. We only have her tax returns that -- that -- for
17 the following year at the same company.

18 Q And the one thing we know you didn't do is you didn't
19 call the borrower to ask, did you?

20 A You would never call the borrower to ask.

21 Q The answer to my question is no, you did not?

22 A No. You wouldn't.

23 Q You didn't call the employer to ask, what kind of
24 company is this?

25 A Excuse me. I didn't -- I don't know if the

1 underwriting house did or not.

2 Q It's not indicated anywhere in their notes, is it?

3 You've got them right there.

4 A I wouldn't expect it to be in their notes. I would
5 expect it to possibly be in the loan file, but not in the
6 notes.

7 Q And nobody called the company to find out was this
8 borrower a vice-president or a supervisor of office and
9 administrative workers?

10 A That was not the purpose for -- she already told us
11 that she's only making \$37,000 a year. We gave her the
12 benefit of the doubt by going --

13 THE COURT: Okay. Okay. Okay.

14 THE WITNESS: Sorry.

15 THE COURT: Stop.

16 THE WITNESS: Sorry, Your Honor. Sorry.

17 THE COURT: We're not going to argue. We're going
18 to have questions --

19 THE WITNESS: I'm sorry.

20 THE COURT: -- and we're going to have answers.

21 Mr. Rollin, when you get to an appropriate point
22 it's coming up on time for a break, perhaps not yet, but
23 soon.

24 MR. ROLLIN: Thank you. I will, Your Honor.

25 BY MR. ROLLIN:

1 Q I just want -- just answer this question. Nobody on
2 behalf of the trustees called the company to find out
3 whether the borrower was a vice-president or something else,
4 right?

5 A No.

6 Q Because, as you said a moment ago, you would never do
7 that?

8 A Correct.

9 Q You wouldn't call the borrower. You wouldn't call the
10 company.

11 A I wouldn't, no.

12 Q And the trustees didn't either?

13 A I don't know. They might have contacted the company.

14 Q So in evaluating the trustees' process you did not
15 learn whether they contacted the company?

16 A They would only include that if there was a response
17 from Global Comm or not. They wouldn't include it if there
18 was no response.

19 Q The bottom line is you don't know?

20 A Correct. Like I said I haven't got the whole loan file
21 to review.

22 Q Now --

23 A I'm sorry. I'm not trying to argue.

24 Q If the borrower had some information to provide it is
25 not part of your practice to collect that information,

1 right?

2 A I review what's in the loan file, what the borrower
3 provided.

4 Q If, in the course of doing your review, the borrower
5 had some information to provide that might be relevant to
6 the lending transaction that you are reviewing, you wouldn't
7 know that because you don't contact the borrower?

8 A Correct.

9 Q And it doesn't only apply to the borrower in this
10 claim. That's a general practice, right?

11 A In the industry. Yes.

12 Q It's the same general practice that the trustees
13 followed, correct?

14 A Correct.

15 Q It's also not part of your process to contact the loan
16 officers, right?

17 A No.

18 Q And that's the other person who was engaged in the
19 communication with the borrower in the lending transaction
20 under review, correct?

21 A One of them. Yes.

22 Q And, in fact, you believe it would be absurd to merely
23 suggest that it might be appropriate to contact the parties
24 who were engaged in the transaction under review, right?

25 A Yes.

1 MR. ROLLIN: We can take a break, Your Honor.

2 THE COURT: Okay. What I would like to do is take
3 a ten minute break and then I'm going to need a 15 minute
4 break at noon to do a conference call. We can either take
5 that as a 15 minute break or take that as an early lunch.
6 I'm inclined to keep going a little bit after 12:15 if
7 that's all right. Okay.

8 MR. ROLLIN: Whatever Your Honor's preference is
9 --

10 THE COURT: Okay.

11 MR. ROLLIN: -- is fine.

12 THE COURT: So let's do ten minutes now and we'll
13 come back at 11:15.

14 THE WITNESS: Thank you, Your Honor.

15 (Recess taken at 11:06 a.m.; reconvened at 11:21 a.m.)

16 THE COURT: Have a seat, please. We'll wait.

17 MR. DAVIS: I'll e-mail.

18 THE COURT: Okay. Thank you, Mr. Davis.

19 (Pause)

20 MR. SHUSTER: The pause that refreshes.

21 THE COURT: Well put, Mr. Shuster.

22 Do you have enough water up there? Something --

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Something stronger, Mr. Morrow?

25 (Laughter)

1 THE WITNESS: I don't drink so I can't -- it's --

2 THE COURT: Never too late to start, I guess.

3 (Laughter)

4 THE WITNESS: Well, as my wife says it's never too
5 late to stop.

6 (Pause)

7 MR. COSENZA: I apologize, Your Honor.

8 THE COURT: It's all right.

9 (Pause)

10 THE COURT: We do have that restroom back here
11 that everyone's welcome to use to save the hike all the way
12 around.

13 THE WITNESS: Oh, that's nice.

14 THE COURT: One of the few perks of my position is
15 I have a nice piece of Manhattan real estate, a beautiful
16 view, a bathroom back there for the law clerks.

17 MR. COSENZA: Your Honor, I do apologize. Mr.
18 Rollin was pairing down. That's why he's actually --

19 THE COURT: Okay.

20 MR. COSENZA: He was trying to pare down his --

21 THE COURT: Okay.

22 MR. COSENZA: -- things so I apologize for this.

23 THE COURT: We'll just wait.

24 (Pause)

25 MR. ROLLIN: Believe it or not, Your Honor, this

1 is not my most embarrassing courtroom moment, but it is very
2 close.

3 (Laughter)

4 THE COURT: Well, I don't consider this
5 embarrassing, so I would be interested to hear what the
6 other one was.

7 (Laughter)

8 MR. ROLLIN: I apologize.

9 THE COURT: I appreciate your apology.

10 MR. ROLLIN: Thank you.

11 THE COURT: I understand you were trying to pare
12 down your questions.

13 MR. ROLLIN: I -- I am. Yes.

14 THE COURT: So it was time well spent.

15 MR. ROLLIN: Thank you.

16 THE COURT: All right. I do have to stop at 12:00
17 for that phone call for 15 minutes --

18 MR. ROLLIN: Okay.

19 THE COURT: -- one way or the other.

20 MR. ROLLIN: Thanks.

21 May I continue?

22 THE COURT: Yes.

23 MR. ROLLIN: Okay.

24 BY MR. ROLLIN:

25 Q Mr. Morrow, we are still in the loan file that is --

1 the last four digits are 3117 and I'll ask you to turn to
2 PA-912 which is the claim package, and specifically to page
3 22.

4 (Pause)

5 A Yes.

6 Q And on page 22 of the claim package is the W-2 that's
7 referenced in the breach findings provided by the trustees,
8 correct?

9 A Yes.

10 Q Now this loan, you'll recall, originated in July of
11 2006. We saw that on the loan application, correct?

12 A Yes.

13 Q And this W-2 form is for the aggregate income for the
14 year 2007, correct?

15 A Correct.

16 Q So covering a period of time approximately 17 months
17 from origination, correct?

18 A Correct.

19 Q And for purposes of making the claim neither you nor
20 the trustees considered whether the income numbers taken
21 from the 2007 W-2 could have been affected in the course of
22 the 17 months between origination and the W-2, correct?

23 A Yes. That was the purpose of the BLS.

24 Q You're saying that the purpose of the BLS was to
25 confirm the borrower's income at origination in 2006?

1 A No, to confirm the fact that she made a
2 misrepresentation at the date of the loan.

3 Q So subject to all of the limitations and the manner in
4 which BLS was used, correct, you recognize as we talked
5 about before that there are limitations on BLS and it was
6 used by using a different occupancy -- I'm sorry --
7 occupation, right?

8 A In my estimation it was used correctly so I -- I can't
9 agree with you on the fact of all the things. There are no
10 exceptions is correct.

11 Q Let's set aside BLS. We already talked about it. I
12 want to focus on the W-2. Seventeen months passed between
13 origination and the time of this -- the income that this W-2
14 captures, right?

15 A Correct.

16 Q And you understand that in the passage of the 17 months
17 something could have happened such that the income stated at
18 origination may be accurate even if the numbers reflected on
19 a 2017 (sic) W-2 are different, right?

20 A Yes, and we took that into consideration. Yes.

21 Q And what you used and what the trustee's used to assert
22 the income misrepresentation was one-twelfth of the
23 aggregate income for the year 2007, correct?

24 A If she was still at the same employer -- employee --
25 company, yes.

1 Q And that is what happened in this case?

2 A Correct.

3 Q Okay. And you took that aggregate income, you divided
4 it by 12 to come up with a monthly income, right?

5 A Yes.

6 Q And then you took that monthly income and you said,
7 this is what I'm going to assume was the borrower's income
8 at origination to determine whether or not there was a
9 misrepresentation, correct?

10 A Correct.

11 Q And that was the general practice of the trustees when
12 looking at an aggregate income figure. They divided it by
13 12, took that one-twelfth and assumed it was the income at
14 origination for purposes of determining whether there was a
15 misrepresentation at origination, right?

16 A Along with the fact that they were at the same
17 employed.

18 Q So the --

19 A Yes.

20 Q -- the answer is yes. And the trustees' review was not
21 designed to find out if anything happened in the borrower's
22 life between origination and that aggregate annual income
23 figure that could account for the decrease in income over
24 time, correct?

25 A That's incorrect. That's incorrect.

1 (Pause)

2 Q Let's take a look at your deposition, please, page 383.
3 And we're focusing on line 21.

4 A Were you asking me the last question on this loan
5 because you didn't say that. You said did -- did the --
6 that wasn't your question. Are you saying this loan?

7 Q Well, on this loan that didn't happen, right?

8 A If it wasn't in the loan file we didn't do anything.
9 Yes.

10 Q And in general the re-underwriting exercise that was
11 engaged in here by the trustees wasn't designed to find out
12 if anything happened in the borrower's life after
13 origination that could have affected her income, right?

14 A For this loan, correct

15 Q The whole re-underwriting exercise?

16 A No, because we -- the -- we have letters from borrowers
17 saying, we have problems, here's our problem. So they
18 indicated it. In the file we would have hardship letters
19 and that and we would read those and utilize them.

20 So the answer is, yes, we -- we didn't look for those
21 and if they're in the file we considered them.

22 Q Let's go back to the deposition then, 383, line 21.
23 Are you ready?

24 A Yes.

25 Q Beginning at line 21:

1 "Question: And the re-underwriting exercise that was
2 engaged in here by the trustees didn't -- wasn't
3 designed to find out if anything happened in the
4 borrower's life after origination that could have
5 affected her income?"

6 There's an objection.

7 "Right?"

8 Your answer:

9 "They took the loan file. We took the loan file,
10 analyzed, re-underwrote the loan file for reps and
11 warranties, and applied that. That is the duty of the
12 trustee in putting back a claim. If Lehman wants to do
13 the next step of going back and figuring out what her
14 life is, that's up to Lehman to decide, not our
15 borrower. They don't sell. You don't establish a
16 value of the loan and see if it increased or decreased
17 based on running around doing what you are suggesting."

18 Did I ask you those questions and you gave me that
19 answer?

20 A Yes.

21 Q And it is your position that it is Lehman's burden to
22 determine if something happened in the intervening 17 months
23 with respect to this borrower to show that the income figure
24 used by the trustees is wrong, right?

25 A Yes.

1 Q And based on the BLS and the W-2 that are in this file
2 you have no idea what this borrower actually made at
3 origination, right?

4 A No, we don't, other than the -- well, no.

5 Q And under the industry standard that guides your work
6 in this case, once there's an indication of a
7 misrepresentation it is the sellers, it is the plan
8 administrator, it is Lehman's burden to disprove it, right?

9 A When it's this big of a dis -- misrepresentation, yes.

10 Q In your deposition, 367, please.

11 (Pause)

12 Q You with me, line 10?

13 A Okay.

14 Q My question:

15 "My question is whether under the industry standard
16 that guides your work whether, if there's an indication
17 of a misrepresentation it then becomes the seller's
18 obligation to disprove it?"

19 There's an objection.

20 I say on page 367 at line 3, "Mr. Morrow, please answer
21 the question." Your answer, "In the industry if the loan is
22 put back for a claim like this, that is an exemplar. It is
23 up to the seller to prove that it is wrong," correct?

24 A Correct.

25 Q That's the industry standard, right?

1 A Yes.

2 Q And that's the standard that you applied and that's the
3 standard that the trustees applied, right?

4 A Correct.

5 Q Would you please turn to Plan Administrator 133?

6 (Pause)

7 Q Are you there?

8 A Yes.

9 Q This is the borrower's hardship letter, correct?

10 A In 2011, yes.

11 Q And it's -- it's in the loan file, but not in the claim
12 package, right?

13 A Correct.

14 Q So re-underwriters had access to it and you had access
15 to it, right?

16 A My understanding everybody had access to it, but --

17 Q Including the --

18 A -- the PA, too?

19 Q Sure. Including the trustees' re-underwriters, yes?

20 A Yes.

21 Q Including Duff & Phelps, yes?

22 A Everybody had it.

23 Q Include --

24 A Yes.

25 Q Including Mr. Morrow?

1 A Yes.

2 Q And including ICG?

3 A Yes.

4 Q Now didn't you testify yesterday you re-underwrote the
5 files four times?

6 A We did.

7 Q Four times. And here's what the borrower writes in her
8 hardship letter. And I apologize. It's a little lengthy,
9 but it matters.

10 "I'm writing this letter to explain my current
11 financial situation. I purchased my home in July 2006.
12 The slowdown of the economy resulted in my new
13 position with my company to be terminated. This
14 position would have increased my financial income
15 substantially.

16 "Unfortunately, the economy didn't improve and by 2007
17 my company decided to close our New York office and
18 merge with our Greenwich, Connecticut office."

19 Are you with me so far?

20 A Yes.

21 Q So what she's saying is by 2007 my office decided to
22 close, correct?

23 A Yes. And she moved to Greenwich.

24 Q And so she's speaking to that period of time between
25 origination and the W-2, right?

1 A No. She's speaking to -- in 2011 as to what happened
2 and she moved to Greenwich -- she had to move to Greenwich,
3 Connecticut.

4 THE COURT: Where does it say that --

5 THE WITNESS: Her job. They closed the New York
6 to merge to Connecticut and Greenwich Village, Connecticut.
7 She didn't say she lost her job.

8 THE COURT: She didn't say she moved, did she?

9 THE WITNESS: No. I'm saying she had to go to
10 Greenwich. She had to travel to Greenwich. I'm sorry, Your
11 Honor.

12 BY MR. ROLLIN:

13 Q In the year 2007, right? Right?

14 A This is written two -- I don't know how to answer the
15 question. Is it a partial question? In the year 2007 I
16 just -- I'm sorry.

17 Q In the year --

18 A Can you finish the question or restate the question?

19 Q "The economy didn't improve and by 2007 my company
20 decided to close our New York office and merge with our
21 Greenwich office," right? That's what she said.

22 A Yeah. She moved to Greenwich. She had to travel to
23 Greenwich.

24 Q In the year 2007, right?

25 A Yes.

1 Q Which is the period of time between origination and the
2 W-2, right?

3 A And -- yeah. She had moved to Greenwich.

4 Q Her company is obviously experiencing a problem because
5 of the economy in 2007. That's what she's saying in her
6 letter, right?

7 A The company is having problems. Yes. She doesn't say
8 she got a cut in pay.

9 Q Oh, well, it goes on. She goes on to talk about having
10 had -- let's see.

11 "After dealing with the relocation of my job, I was
12 sick for a while and had to run back and forth to the
13 doctor. It all started when I was unable to lift my
14 right arm and had experienced some sharp pains in my
15 chest," right?

16 A Yes.

17 Q She's -- this borrower is describing the effect of the
18 economic downturn and health problems. And if you see it
19 goes on other problems that she is experiencing, correct?

20 A Which she's describing in 2011. Yes.

21 Q She's speaking to a time in the past, sir, correct?

22 A Yes. What the timing is, we don't know.

23 Q And even though -- okay. You don't know the timing
24 even though it says by 2007, those words --

25 MR. LIEBERMAN: Object.

1 BY MR. ROLLIN:

2 Q -- correct?

3 MR. LIEBERMAN: Objection, Your Honor. It
4 misstates the document and it says the -- the sentence he
5 just read is precluded by a sentence that says, at -- at
6 this time, which is 2011.

7 THE COURT: Okay. Listen we're going to keep
8 reading this document --

9 THE WITNESS: Uh-huh.

10 THE COURT: -- until we have a clear record as to
11 what this document says.

12 Mr. Rollin, you can start over again as far as I'm
13 concerned because there's been a statement made about how it
14 affected the position. And I don't think that that's
15 accurate either. So we're going to keep going until we get
16 this whole document right.

17 All right. There's no dispute. We can scroll
18 down and see the date on the document, the date it was
19 written. Right. There's no dispute that it was written in
20 2011. Okay. Let's put that aside.

21 Keep going, Mr. Rolling.

22 BY MR. ROLLIN:

23 Q You understand this is a borrower communication
24 describing a financial hardship, correct?

25 A Yes. They're requesting -- requesting modification.

1 Q And she discusses a slowdown of the economy resulting
2 in a -- an effect on her position in her company in the
3 first couple of lines of this document, correct?

4 A Yes.

5 Q And the time frame that she's referencing is by 2007
6 the company decided to close the New York office and merge
7 with the Greenwich office, right?

8 A Yes.

9 Q So she is speaking to the period of time between
10 origination and the W-2 that the trustees rely on to assert
11 the claim, right?

12 A She's speaking in a period of -- yeah.

13 Q She is also communicating that after dealing with the
14 job relocation she started to experience some health
15 problems, correct?

16 A Yes.

17 Q And they're detailed here quite clearly without going
18 into the borrower's particular health problems, right?

19 A Except for time frame, yes.

20 Q Right. The time frame of the health problems isn't
21 clearly spelled out except that it happened after dealing
22 with the relocation of her job, correct?

23 A Right.

24 Q And there was nothing in your process that was designed
25 to take a look at these facts and find out whether they

1 effected her income in -- during the passage of the 17
2 months from origination to the income that you used to make
3 the claim, right?

4 A No, but I -- well, I -- the thing is, if she had a
5 decline in income she would stated here. All she did is say
6 that she changed -- she had to go to the -- to Greenwich to
7 keep her job. There's no indication she made less money
8 than she was making than when she was in New York.

9 Q The words, "if she had a decline in income she would
10 have stated it here," is speculation on her part, correct?

11 A I'm reading the document. It is not there. So it's
12 speculation? Well, having worked -- well, I don't want to
13 get in an argument.

14 Q It's speculation. You don't know what she would have
15 done or what she was thinking when she wrote this, right?

16 A No, but I work with borrowers for years and they would
17 say, I had a decline in income. She didn't.

18 THE COURT: I'm sorry. I'm just not getting this.
19 Okay. This person starts this letter by saying, I purchased
20 my home in July of 2006. The very next sentence says,
21 albeit somewhat inarticulately, okay, and we have no idea
22 whether this is English as a second language or what, but
23 the words on the page say:

24 "With slow down of the economy resulted in my new
25 position with my company to be terminated. This

1 position would have increased my financial income
2 substantially."

3 What part of that is un -- is unclear?

4 THE WITNESS: Okay.

5 THE COURT: I'm not --

6 THE WITNESS: I --

7 THE COURT: I'm not trying to --

8 THE WITNESS: I -- I'm not --

9 THE COURT: -- argue with you either.

10 THE WITNESS: I'm not, Judge.

11 THE COURT: I am literally not understanding --

12 THE WITNESS: What --

13 THE COURT: -- what the implication of that
14 statement is other than I had a position, I was going to
15 make more money, the economy slowed down, I'm not going to
16 make that money anymore, and on top of everything the New
17 York office closed and merged with the Greenwich office,
18 which we -- is corroborated by the W-2 because it shows part
19 year income from New York and part year income from
20 Connecticut, right?

21 THE WITNESS: Right. But that's why we did the
22 BLS to show that what would have been -- BLS shows much
23 higher income than what she had on her thing so that we
24 could see and she still is far exceeding what BLS --

25 THE COURT: And did you notice that on the BLS

1 this woman is -- has a Bronx address and she worked in
2 Manhattan and the BLS was for White Plains and Wayne, New
3 Jersey?

4 THE WITNESS: I know. I know.

5 THE COURT: I'm sorry.

6 THE WITNESS: I understand.

7 THE COURT: Go ahead, Mr. Rollin.

8 BY MR. ROLLIN:

9 Q By the way when you said you -- that's why you ran the
10 BLS, you don't mean that's why you ran the BLS. The BLS was
11 run by the re-underwriting firm?

12 A We checked every one.

13 Q The BLS was run was run by the re-underwriting firm?

14 A Yes, but it was checked by us.

15 Q That wasn't my point. You don't know --

16 A Yes.

17 Q -- you don't know why the re-underwriting firm ran the
18 BLS?

19 A All I know is they ran it. Yes.

20 Q All right. You don't know why because you didn't ask
21 them?

22 A No. I didn't ask because I was there.

23 Q Now all of this information, and I won't read the whole
24 letter into the record. It goes on in substantial detail
25 about other hardships as well, none of this information

1 would affect your analysis of this claim at all, would it?

2 A Not that there was misrepresentation at the date of
3 origination, no, it wouldn't.

4 Q And when you say at the date of origination you mean
5 July 2006 and you base your statement that there was a
6 misrepresentation on 2007 income, right?

7 A And the BLS. Yes.

8 Q Do you not view this as inconsistent evidence?

9 A No. I consider it that there's part of the evidence
10 that is in the total loan package.

11 Q Okay. So in performing the review that you performed,
12 if you had information like -- like this you wouldn't
13 consider it as in -- this is not what you mean when you say
14 inconsistent evidence?

15 A I didn't say inconsistent -- I don't think I've used
16 that word.

17 Q I asked you, is this inconsistent evidence and you said
18 no?

19 A I said the whole file was there. Based on the whole
20 file it's part of the -- the evidence we had. This is the
21 only loan that I can remember that we had letters like this,
22 but, yeah.

23 Q This is the only loan you remember where there was a
24 hardship letter?

25 A No. I said a letter like this.

1 Q So let's back up a little bit. This letter, is it a
2 piece of inconsistent evidence or not?

3 A I don't think it's inconsistent with the decision that
4 she was -- that she made a misrepresentation of income on
5 the date that it was there.

6 Q Even though you don't know what her actual income was
7 at origination?

8 A Correct.

9 Q I'll represent to you, Mr. Morrow, that this loan
10 performed for nine years, nine years. Would you take my
11 representation for purposes of this question?

12 A Fine.

13 Q Does that matter to you?

14 A What --

15 Q Does that matter to your analysis of this loan at all
16 that it performed for nine years?

17 A No.

18 Q We've talked a bit about industry custom and practice
19 and specifically about not contacting borrowers and
20 originators. Do you remember that?

21 A Yes.

22 Q In fact, you testified earlier that you think it would
23 be absurd to do so, right?

24 A I didn't --

25 Q Well, you --

1 A I don't know if I used the word absurd. It's not done
2 in the industry on a re-underwriting like we did.

3 Q You do recall testifying that even the idea of
4 contacting the loan officers was absurd, don't you?

5 A Yes, because so many of them aren't even in the
6 industry anymore.

7 Q Do you think that it's impossible to find the
8 originators?

9 A There's a difference between an originator and a loan
10 officer.

11 Q Well, the originators have records from the lending
12 operations, don't they?

13 A They should.

14 Q And do you think we can't track originators down and
15 say, bring them into court or issue a subpoena?

16 A But that's different than contacting the loan officer.

17 Q I'm ask -- I asked you a different question. Do you
18 think that it's impossible to find the originators of the
19 loans, send them a subpoena, bring them to court, do what
20 you have to do to get the information from them?

21 A No. I've done that work.

22 Q Okay. So that is possible. You just didn't do it?

23 A I wouldn't do that. I did re-underwriting. I'm not an
24 attorney.

25 Q To collect the information from the originators neither

1 you nor the trustees issued any subpoenas or did any of that
2 to collect the information that the originators had, right?

3 A No. We didn't -- I -- all I got was what was provided.

4 Q Now you understand that Lehman is a participant in the
5 RMBS market, right, was?

6 A Yes.

7 Q And it is part of the industry that participates in
8 this type of repurchase litigation, right?

9 A Yes.

10 Q And, in fact, you testified that you were an expert
11 witness for Lehman in one case, correct?

12 A Well, actually, there were four. But, yes, one.

13 Q You know that Aurora is not Lehman, right?

14 A Well, that's fine. Okay.

15 Q And you know that Lehman regularly obtained information
16 directly from borrowers, directly from employers, directly
17 from the originators?

18 MR. LIEBERMAN: Objection.

19 THE COURT: Yes. What's the objection?

20 MR. LIEBERMAN: Lack of foundation.

21 THE COURT: I'm sorry.

22 MR. LIEBERMAN: Lack of foundation.

23 THE COURT: All right.

24 MR. ROLLIN: Mr. Morrow was an expert in a case
25 where, in fact, Lehman --

1 THE COURT: You can lay the foundation.

2 MR. ROLLIN: Okay. I was trying to speed things
3 up, but I --

4 THE COURT: Understood.

5 MR. ROLLIN: -- I will.

6 BY MR. ROLLIN:

7 Q Mr. Morrow, will you please identify in your binder,
8 not the loan binder but the other binder, TRX-10 --

9 A Oh, you're talking about --

10 MR. ROLLIN: Your Honor, this might be an
11 opportune time.

12 THE COURT: Okay.

13 MR. ROLLIN: This is a little bit of a lengthy
14 examination.

15 THE COURT: All right. So then is it still
16 alright with you, Mr. Rollin, to come back at 12:15?

17 Mr. Morrow, my concern is more with you. Are you
18 okay to keep going at 12:15 for another segment before you
19 take a lunch break?

20 THE WITNESS: Sure.

21 THE COURT: Okay.

22 THE WITNESS: Okay.

23 THE COURT: All right. We'll come back at 12:15
24 and we'll take lunch after that.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 (Recess taken at 11:56 a.m.; reconvened at 12:17 p.m.)

3 THE COURT: Please have a seat.

4 THE WITNESS: Okay.

5 THE COURT: Okay.

6 BY MR. ROLLIN:

7 Q Mr. Rollin, did you read Mr. Trumpp's trial testimony?

8 A No.

9 Q And you weren't here for it?

10 A Correct.

11 Q Do you know what Lehman's practices are related to the
12 collection of information from borrowers, employers, and
13 others?

14 A No. I mean, it's so long ago I don't remember.

15 Q In assessing what the industry standard is or what
16 industry custom and practice is you did not research what
17 Lehman's practices were in that regard, did you?

18 A I do not believe it is available online, so, no.

19 Q Did you ask anybody that you worked with at the
20 trustees what they might have known about Lehman's practices
21 in this regard?

22 A No.

23 Q So you didn't feel it was important for you to know
24 what Lehman's practices as a member of the industry on which
25 you're giving an opinion were in this regard?

1 A No.

2 Q Mr. Morrow, some of the binders that you have are from
3 yesterday's examination that were by the -- in your direct,
4 and included within them, one of them -- oh, I'm looking for
5 Volume I which contains your expert report.

6 A Yes.

7 Q Do you see that? And if you look at the tab marked F,
8 that's an exhibit from your report and we talked about it
9 yesterday. Do you remember that?

10 A Yes.

11 Q And this is for the excessive DTI claims, right?

12 A No. This was a -- no. That's --

13 Q What --

14 A -- incorrect information.

15 Q What is it -- what is Exhibit F?

16 A F is to demonstrate Mr. Grice's assertion that the
17 loans would have been made anyway because they were under
18 the maximum DTI was incorrect.

19 Q And in order to perform that DTI calculation you have
20 actual DTI in the far right-hand column, correct?

21 A Yes.

22 Q And the D in DTI stands for debt and the I in DTI
23 stands for income, correct?

24 A Correct.

25 Q And so what you would need to know is the actual debt

1 and the actual income at origination in order to perform a
2 DTI calculation, correct?

3 A For this chart, no.

4 Q For this chart you do not need to know what the actual
5 debts or the actual income of the borrowers --

6 A It is --

7 Q -- was?

8 A It is the actual debts of the borrower identified and
9 found and the income that was verified through the re-
10 underwriting.

11 Q Let's focus on the word actual. Actual means, and I
12 think you actually testified to this yesterday, real?

13 A Right.

14 Q In fact, verified means real?

15 A Yes.

16 Q But you don't know the actual income of a borrower at
17 origination, do you?

18 A Based on the industry you do.

19 Q No. No. I would like -- let's focus on what you know,
20 what you -- and what you don't know. What you don't know
21 based on the types of information collected by the trustees
22 in this process is how much money the borrower made at
23 origination. You have inference?

24 A That's correct. We know that misrepresent -- that it
25 was misrepresented, but we do not know what it actually is.

1 Q You have inference, right?

2 A In some cases we actually have tax returns --

3 Q Well --

4 A -- for the year that the loan was made, so we do have
5 proof.

6 Q Let --

7 A That's why I have a problem with your question.

8 Q Let's separate tax returns. Other than tax -- and
9 we'll talk about those in a minute. Other than tax returns
10 you have an inference of what the borrower made at
11 origination?

12 A Well, we may also have bankruptcy filings that show
13 what it is. So that's why I'm having difficulty answering
14 your question. Not all of these are strictly inference.

15 Q We'll take them one at a time. Tax returns, we already
16 had a tax return example today, right, and in that tax
17 return you cited aggregate income in 2007 to tell you what
18 you thought origination income was in July of 2006, right?

19 A That would be inference. I said 2006 in my answer --

20 Q And you --

21 A -- for a 2006 loan.

22 Q It was a 2006 loan and 2007 income, and so you have
23 inference of what the income was at origination, correct?

24 A Correct.

25 Q Let's talk about a bankruptcy petition. In bankruptcy

1 petitions you also have aggregate, generally aggregate year
2 income, correct?

3 A For each individual year, yes.

4 Q And you have to divide that by 12 to come up with a
5 monthly income --

6 A That's --

7 Q -- correct?

8 A -- how the industry does it.

9 Q I understand. But in dividing it by 12 you don't know
10 necessarily that that's what the borrower made at
11 origination. It is an inference?

12 A You -- I'm having a problem answering your question
13 because what the borrower made at that is a monthly income,
14 not a let's take a -- it's not a camera shot and every other
15 month isn't. It's the industry says you take the tax
16 returns for 12 months, one-twelfth of your income. It is
17 not a one month.

18 Q I think Judge Chapman may have asked you a question
19 yesterday about whether there are any instructions on the
20 loan application with respect to how you -- what the
21 borrower is supposed to know to put down in the income
22 section, and you agree, don't you, that there is nothing in
23 the loan application that gives the borrower instruction to
24 divide their annual income in the manner in which you
25 suggest?

1 A No. That's why the loan officer is involved in helping
2 them fill out the application.

3 Q Okay. Let's do this one at a time. First of all, no
4 instructions to the borrower, right?

5 A I would like to look at a loan application and see if
6 there isn't any instructions. It may be there. Quite often
7 they have a information on base income or at the bottom it
8 says, monthly income. As a matter of fact it does say on
9 the application monthly income.

10 Q Let's (indiscernible).

11 (Pause)

12 Q Will you turn to your loan binder, please?

13 A Okay.

14 Q And turn to Plan Administrator 913, please? Are you
15 there, sir?

16 A No, because I don't see that I have a 913 in here.

17 Q No. But there are two binders. One is with the loan
18 documentation.

19 A I have the loan documentation.

20 Q It's --

21 A I'm looking for --

22 Q It's about --

23 THE COURT: Mr. Rollin, it would be perfectly fine
24 to go help Mr. Morrow find it.

25 MR. ROLLIN: Thank you.

1 (Pause)

2 THE WITNESS: Yes.

3 BY MR. ROLLIN:

4 Q Okay. 916 is an excerpt from your updated Exhibit D,
5 correct?

6 A Yes.

7 Q And the loan number ends in 3550, just so we all stay
8 on the same page as we go through various documents?

9 A Yes.

10 Q Okay. It is a misrepresentation of income claim,
11 correct?

12 A And the factual basis says the borrower stated income
13 as a medical equipment services earning \$6,500 per month.
14 The loan file contained a tax return submitted from loss
15 mitigation review. According to the borrower's 2006 tax
16 return the total income for the year was \$22,060 which is
17 \$1,838.33 per month. The borrower is in the same position.
18 The recalculated DTI is 137 and 33 percent.

19 Do you see that?

20 A Yes.

21 Q Now the fact that the borrower is in the same position
22 is listed there because it's material, right?

23 A It's one of the considerations we have to make sure
24 that there isn't any reason not to believe the tax return is
25 for the work he's done. Yes.

1 Q What is the borrower's position?

2 A It says here medical services, whatever. Medical
3 equipment services.

4 Q Right. What's the borrower's -- that's -- that's a
5 type of service or a business. What's the --

6 A His --

7 Q -- borrower's position?

8 A His tax return said that he was in medical equipment
9 servicing as I remember. I mean, if I have the whole file I
10 can look at it.

11 Q So you can't tell what the borrower's position was
12 although you can tell he was in the medical equipment
13 services field?

14 A Yes.

15 Q Now this claim is based on the same year tax return,
16 correct?

17 A Yes.

18 Q So what you can see is that the loan originated in July
19 of 2006, and if you -- if you would like to you can go to
20 Column M in that same exhibit on the back of the page, just
21 a --

22 A Yes.

23 Q Now -- and if you go to Plan Administrator 914, that's
24 the claim package.

25 A Yes.

1 Q And if you go to page 11 that's the tax return that the
2 trustees are relying on?

3 A Yes.

4 Q And the trustees, just like we've described, use the
5 aggregate year income for 2006 to derive an assumed monthly
6 income for purposes of determining whether the borrower made
7 a misrepresentation?

8 A Yes.

9 Q Now in July of 2006 when the borrower made the
10 application he didn't necessarily know what it was going to
11 be on his tax return that's filed in April of 2007, right?

12 A No, he wouldn't.

13 Q And you understand that the borrower's income could
14 have changed between July 2006 and the end of 2006, right?

15 A Yeah. It could have changed.

16 Q Okay.

17 A Yes.

18 Q And you don't know the borrower's income at
19 origination, do you?

20 A Yeah. Yes, for -- through July -- through June we do
21 know what his income should be based on his application.

22 Q You don't know the borrower's income at origination, do
23 you?

24 A Yes, we do. His monthly income was \$6,500 a month. If
25 you multiply that times six he should be making somewhere

1 around 42, \$43,000 minimally at that time. He doesn't even
2 show that on his tax return.

3 Q I'm going to show you a piece of deposition, For
4 everybody's benefit it is on page 403, line 20, and we'll
5 show through 404, line 5.

6 (Video clip played)

7 BY MR. ROLLIN:

8 Q I asked you that question and you gave me that answer?

9 A Yes, I did.

10 MR. LIEBERMAN: Objection. Is -- is this
11 testimony about the same loan file?

12 MR. ROLLIN: It is. Yeah.

13 THE COURT: Is there any question about that?

14 MR. LIEBERMAN: I don't know. Can you point me to
15 that part in the deposition?

16 MR. ROLLIN: I will.

17 (Pause)

18 MR. ROLLIN: You can see the lead up to it is all
19 talking about this period between July of '06 and December
20 of '06, but I'll find you the loan application shortly.

21 MR. LIEBERMAN: In the meantime there's something
22 else I would like to read into the record.

23 MR. ROLLIN: Do you want me to do this first?

24 THE COURT: Okay. Hold on a second.

25 MR. ROLLIN: The reference -- the -- it appears

1 the first reference to this loan in the examination is on
2 page 390 of the deposition, line 5.

3 (Pause)

4 MR. LIEBERMAN: Got it. Thank you.

5 THE COURT: Okay. And then what is it that you
6 want to read into the record?

7 MR. LIEBERMAN: It's later testimony from the
8 deposition that's consistent with this.

9 THE COURT: Why don't you identify the passage for
10 Mr. Rollin before you read it.

11 MR. LIEBERMAN: Sure. It's 404 -- the question is
12 404, 6 and the answer goes to 404, 17.

13 THE COURT: Any objection, Mr. Rollin?

14 MR. ROLLIN: Yeah. I'll have a little bit after
15 that through 405, 4 and Mr. Lieberman can read the --

16 THE COURT: Why don't you just read the whole
17 thing, Mr. Rollin?

18 MR. ROLLIN: I'll be happy to. Sure. Beginning
19 at 404, 6:

20 "You would say that, but you actually have no
21 idea?" There's an objection at line 9 -- at 8, and at 9 he
22 continues, "Yes, I do. I have his tax return."

23 "Question: And we've established the tax returns
24 for the whole year?"

25 "Answer: Yes, and that he couldn't make \$6,500 a

1 month based on the fact that he made 22,000. If
2 he's making 65 --\$6,500 a month he would have had
3 a far greater income than 22,000."

4 Question at line 18: Assuming that it wasn't
5 substantially curtailed?"

6 Objection at line 20 and 21. "Answer: I have
7 answered it as best I can answer it. I don't want to get
8 into an argument."

9 Question at line 25: "Let's say he is self-
10 employed. He could have made \$6,500 in a single month."

11 "Answer: I don't know."

12 THE COURT: Okay.

13 BY MR. ROLLIN:

14 Q You were asked those questions and you gave those
15 answers in deposition, right?

16 A Yes.

17 Q Now under your approach to reviewing claims that are
18 asserted based on tax returns, when you have the loan
19 application in the one hand and you have a tax return in the
20 other hand, you take the tax return as being true and the
21 loan application as being false, right?

22 A The loan application is proved false by the tax return.
23 So, yes.

24 Q It is an assumption that you make that the loan
25 application is false and the tax return is true as part of

1 the way you re-underwrite?

2 A That's how the industry re-underwrites. I underwrite
3 to the industry standards. Tax returns are taken, if you
4 want to say as gospel. Applications, based on subsequent
5 verifications which is the nature of quality, may show
6 misrepresentation in the application.

7 Q But your experience, in fact, tells you that most of
8 the time, sir, borrowers don't lie?

9 A What I said was -- I know what your reference is. What
10 I said is you don't start a loan package with the assumption
11 that the borrower lied. You -- or you wouldn't make the
12 loan. And that's -- that's the essence of it. That's why
13 you do quality control and verifications and re-
14 underwriting, to verify that information.

15 Q Your experience tells you that most of the time
16 borrower's don't lie, isn't that right?

17 A Most mortgage loans borrowers do not lie on their
18 application because they're full doc or they're going to
19 Fanny or whatever. Yes.

20 MR. ROLLIN: Can I have just a moment, Your Honor?

21 THE COURT: Sure.

22 MR. ROLLIN: We got a little out of order.

23 THE COURT: Okay. No problem.

24 (Pause)

25 THE WITNESS: Your Honor, can we take a break?

1 THE COURT: Yes.

2 THE WITNESS: I -- I desperately need one.

3 THE COURT: Fair enough, Mr. Morrow. We apologize
4 for --

5 THE WITNESS: No. That's fine.

6 THE COURT: -- for going too long. I think
7 probably now would be a good time to take the lunch break.

8 THE WITNESS: Thank you.

9 THE COURT: I think you would agree with
10 everybody.

11 So let's take a good hour.

12 THE WITNESS: Thank you.

13 THE COURT: Okay. And, Mr. Rollin, just give us
14 some sense of the coming attractions.

15 MR. ROLLIN: I -- maybe a half an hour or so would
16 be my expectation.

17 THE COURT: Okay. And would you folks be able to
18 start right in after that with a brief break?

19 MR. LIEBERMAN: Yes.

20 THE COURT: All right. So we will be able to let
21 Mr. Morrow go back to life after today, right?

22 MR. LIEBERMAN: Yes.

23 MR. ROLLIN: Yes.

24 THE COURT: Okay.

25 MR. SHUSTER: A question, Your Honor.

1 THE COURT: Sure. Mr. Morrow, you can step down.

2 Thank you, sir.

3 MR. SHUSTER: If I recall from yesterday --

4 THE COURT: Yeah.

5 MR. SHUSTER: -- Your Honor has a call --

6 THE COURT: I have a call at 4:15 and I can again

7 do the -- I'll hang up on them after 15 minute thing if --

8 so that we can keep going later than --

9 MR. SHUSTER: Okay.

10 THE COURT: -- that if that --

11 UNIDENTIFIED SPEAKER: That would be great.

12 THE COURT: -- if that works for you.

13 UNIDENTIFIED SPEAKER: Thank you.

14 MR. SHUSTER: Thank you.

15 THE COURT: All right.

16 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

17 THE COURT: Okay. So we'll see you in an hour.

18 UNIDENTIFIED SPEAKER: Thank you.

19 (Recessed at 12:40 p.m.; reconvened at 1:46 p.m.)

20 THE COURT: Please have a seat.

21 Okay. Mr. Shuster.

22 MR. SHUSTER: Your Honor, the trustees will call

23 Dr. Karl Snow --

24 THE COURT: Very good.

25 MR. SHUSTER: -- and Ms. Black will conduct the

1 examination.

2 THE COURT: Yeah. Let's do that. We're still
3 struggling with temperature control, so we're going to crack
4 the window in the back which I know the challenge to
5 hearing, but let's see what we can do.

6 Good morning, Dr. Snow.

7 MR. SHUSTER: I've told the people in the back
8 they're welcome to move up, but --

9 THE COURT: Yes. Like the back benchers in law
10 school.

11 (Laughter)

12 THE COURT: Dr. Snow, would you raise your right
13 hand, please.

14 DR. KARL SNOW, WITNESS, SWORN

15 THE COURT: All right. Very good. Please make
16 yourself comfortable including if you're warm you're welcome
17 to take your jacket off.

18 THE WITNESS: I'm good, but thank you.

19 THE COURT: Okay. And you have some water, and if
20 you need a break please let us know. All right.

21 THE WITNESS: Okay. Thank you.

22 MS. BLACK: Your Honor, may I approach? I have
23 some --

24 THE COURT: Yes.

25 MS. BLACK: -- binders and --

1 THE COURT: Of course.

2 MS. BLACK: -- (indiscernible).

3 THE COURT: You have one more set?

4 UNIDENTIFIED SPEAKER: Do we have another set?

5 (Pause)

6 THE COURT: Ready when you are.

7 MS. BLACK: Thank you.

8 DIRECT EXAMINATION

9 BY MS. BLACK:

10 Q Good afternoon, Dr. Snow. Would you please introduce
11 yourself to the Court?

12 A Yes. My name is Karl Snow.

13 Q And where are you currently employed?

14 A I am currently employed at Bates White Economic
15 Consulting, a consulting firm located in Washington, D.C.

16 Q And what is your role at Bates White?

17 A I'm a partner and I am the leader of the finance
18 practice in Bates White.

19 Q Can you describe what type of consulting services Bates
20 White engages in?

21 A Yes. Bates White provides economic, financial and
22 statistical analysis typically on matters related to
23 litigation.

24 Q Now I would like to talk to you a little bit about your
25 background. And, for starters, I am going to refer you

1 during the course of this direct, on occasion I will refer
2 you to certain documents in the exhibit binder that is in
3 front of you. For now I would like you to turn to the
4 document that is labeled TRX-683.

5 (Pause)

6 Q Let me know when you're ready.

7 A I'm there. Thank you.

8 Q What is TRX-683, Dr. Snow?

9 A This is a copy of my curriculum vitae that was attached
10 to my affirmative report in this matter.

11 Q And is your professional experience and background
12 accurately summarized in the curriculum vitae that you
13 submitted with your affirmative report?

14 A It is.

15 Q Now in the interest of time I will not walk you through
16 the entire -- your entire resume. I would like to focus on
17 a few key points.

18 MS. BLACK: Can we please have TRDX-280.

19 BY MS. BLACK:

20 Q Dr. Snow, can you please walk us through your
21 educational record?

22 A Yes. I received a BA in economics from Brigham Young
23 University. I immediately thereafter enrolled at the
24 University of Chicago where I received an MA and PhD in
25 economics, and my PhD focused on econometrics which is

1 statistical work related to financial and economic problems
2 and financial economics.

3 Q Thank you.

4 Now I understand that you lay out your professional
5 accomplishments in your curriculum vitae. I would like you
6 to provide a brief walk through of your career and academia
7 in the private sector. Let's start with academia.

8 MS. BLACK: Can we please have TRDX-281?

9 BY MS. BLACK:

10 Q I understand that you have spent a large portion of
11 your career in academia. Can you tell us about it?

12 A Yes. I spent the first ten years of my career in
13 academics. I started off as an assistant professor of
14 finance at the business school of the University of North
15 Carolina-Chapel Hill. I then went to my alma mater, Brigham
16 Young University, where I was an assistant professor of
17 economics. And while I was at BYU I took a year's leave and
18 was a visiting assistant professor of finance at the
19 Stockholm School of Economics.

20 Subsequent to my leaving academics in 2000 I have
21 occasionally worked as an adjunct professor teaching courses
22 at a American University, Johns Hopkins University, and the
23 Business School at the University of Maryland.

24 Q Thank you.

25 And what type of courses have you taught over your

1 career?

2 A I've taught undergraduate, MBA, PhD and executive MBA
3 courses on topics typically related to financial economics,
4 statistics and economics in general.

5 Q And have you given any presentations during the course
6 of your academic career?

7 A Yes. I have presented my academic research at
8 workshops or seminars at universities in the United States
9 and in Europe and at various conferences.

10 Q And I would like to talk a little bit about your
11 academic research and publications. Have you had any
12 particular focus?

13 A Yes. The focus of my research was on the valuation of
14 financial assets and I published papers in the Journal of
15 Finance, Financial Analyst Journal and economic letters on
16 this broad topic.

17 Q Thank you.

18 Now I would like to move on to your professional
19 experience in the private sector.

20 MS. BLACK: Could we please have TRDX-282?

21 BY MS. BLACK:

22 Q Can you walk us through your professional experience in
23 the private sector, including the areas in which you
24 specialize?

25 A Yes. So as it notes I've had over 25 years working as

1 a professional economist. Since leaving academics I have
2 worked both in the investment and mortgage banking industry
3 as well as a consultant on a variety of topics, including
4 financial securities, insurance, mortgage markets,
5 structured product hedge funds, et cetera.

6 Q Thank you.

7 Now I would like you to walk us through the various
8 employments that you have held over the course of --

9 THE COURT: Can I ask you to hold on for one
10 second?

11 MS. BLACK: Sure.

12 THE COURT: One second.

13 (Pause)

14 THE COURT: Thank you, Dr. Snow. Sorry for the
15 interruption.

16 Go ahead.

17 MS. BLACK: Your Honor, before I resume I do not
18 in any way intend to not show the appropriate decorum.
19 Would it be all right with you if I took off my jacket?

20 THE COURT: Absolutely. Yes. I've ordered people
21 to take their jacket off.

22 (Laughter)

23 THE COURT: We're no --

24 MS. BLACK: I think I might be the first one to
25 take you up on that.

1 UNIDENTIFIED SPEAKER: No. I think --

2 THE COURT: No.

3 UNIDENTIFIED SPEAKER: -- (indiscernible).

4 THE COURT: No. No. We've had before. It's just
5 in -- it's just -- it's a hundred year old building. We
6 cannot control the temperature. When the sun swings around,
7 you know --

8 UNIDENTIFIED SPEAKER: It's pretty warm.

9 THE COURT: -- it --it's a lovely building. I
10 love the old ones, but I'm glad you spoke up.

11 MS. BLACK: Thank you, Your Honor. I appreciate
12 it.

13 BY MS. BLACK:

14 Q Dr. Snow, going back to my previous question I would
15 like to talk to you about the positions that you have held
16 with various firms and institutions in the private sector.
17 And for that purpose let's have TRDX-283. Can you please
18 walk us through this?

19 A Sure. I -- when I left academics I joined UBS Warburg
20 which is now UBS Investment Bank where I was a director of
21 financial markets education, essentially teaching internal
22 courses and working with clients of the bank on a variety of
23 issues related to financial securities.

24 I left UBS and joined Welch Consulting where I worked
25 for two years. But sandwiched in between that was a year

1 working at Freddie Mac in their housing analysis and
2 research group.

3 After leaving Welch Consulting, another economic
4 consulting firm I joined Bates White where I have been since
5 July of 2006 and have been a partner since 2011.

6 Q Thank you.

7 Now I understand this is not the first time that you
8 are testifying in court as an expert. Can you tell us about
9 your experience as a testifying expert?

10 A Yes. I have been, you know, retained on -- as an
11 expert on probably 40 to 50 matters. I have been deposed
12 probably 20 times and have testified in court or an
13 arbitration eight times.

14 Q And generally speaking what are the areas in which you
15 have been retained as a testifying expert?

16 A Broadly speaking, again, economics, finance and
17 statistical analysis. So this ranges from testifying about
18 automated valuation models that are used to value
19 residential properties to claims of discrimination --
20 assessing claims of discrimination in mortgage lending,
21 valuation of assets in a bankruptcy context, and in the MARM
22 or master arm's trial in front of Judge Castel I testified
23 as to purchase prices and damages.

24 Q How many times have you been retained as a testifying
25 expert in matters involving residential mortgage backed

1 securities?

2 A I would say roughly 25 to 30 times.

3 Q And how many of those matters specifically concerned
4 the calculation of a purchase price?

5 A Probably 20 to 25 of those.

6 Q And can you give us a couple of examples of recent
7 engagements in which you were retained as a testifying
8 expert and called upon to calculate the purchase price?

9 A Yes. In addition to the MARM v UBS matter I have been
10 retained as an expert in a US Bank versus Merrill Lynch
11 matter as well as Syncora -- I was previously retained in
12 Syncora v EMC.

13 Q And did you testify in court in any of these three
14 matters?

15 A Only in the MARM trial. Yes.

16 Q And I believe you mentioned earlier that you have
17 testified in court or in arbitration approximately eight
18 times?

19 A That's correct.

20 Q To your knowledge in those matters in which you were
21 testified -- or actually let me withdraw that.

22 Was it in state court, federal court or both for those
23 matters in which you testified in court?

24 A It was both. It was -- I have testified in federal
25 court or federal bankruptcy court five times and state court

1 once.

2 Q Thank you.

3 And to your knowledge in those matters were you
4 qualified to testify by the courts?

5 A I was.

6 Q And does that also include the recent MARM matter in
7 front of Judge Castel?

8 A It does.

9 MS. BLACK: At this point, Your Honor, I would
10 like to tender Dr. Snow as an expert on the calculation of
11 purchase prices for liquidated and non-liquidated loans in
12 this matter.

13 THE COURT: All right.

14 MR. COSENZA: No objection, Your Honor.

15 THE COURT: All right. Very good. Thank you.

16 BY MS. BLACK:

17 Q Dr. Snow, I understand that you have submitted three
18 expert reports in this matter?

19 A That is correct.

20 Q Okay. So I would just like you to authenticate them.
21 If I could refer you to the exhibit binder and first to TRX-
22 682 through 690. Please take a look and let me know whether
23 you can confirm this to be the affirmative report that
24 you've submitted including appendices.

25 A It appears to be a complete copy of my affirmative

1 report.

2 Q Thank you.

3 Now with respect to your rebuttal report I would like
4 to refer you to TRX-691 through 695. Let me know if this is
5 a complete copy of your rebuttal report including the
6 appendices thereto.

7 A Again, it appears to be so.

8 Q Thank you.

9 And, finally, your supplemental report which you
10 submitted most recently. I will refer you to TRX-2725
11 through 2727. Let me know if you recognize this as your
12 supplemental report including the exhibits or appendices
13 thereto.

14 A Again, it appears to be a complete copy of my
15 supplemental reporting.

16 Q Thank you.

17 Now we're going to spend some time this afternoon
18 discussing the analysis that you have performed and the
19 opinions that you have arrived at in this case. For now I
20 would like to pull up here DX-284 which is a demonstrative
21 describing your expert mandate. Starting with your
22 affirmative report can you describe to the Court what your
23 expert mandate in this matter was, what were you asked to
24 do?

25 A I was provided a list of loans by the trustees -- by

1 counsel for the trustees and I was asked to calculate
2 purchase prices for each one of those loans, and for the
3 non-liquidated loans I was asked to subtract an estimate of
4 the market value of that loan to calculate a net purchase
5 price.

6 Q And how many loans in total, liquidated and non-
7 liquidated did you calculate a purchase price for?

8 A Roughly 75,000 loans, 15 of the -- 15,000 of those were
9 non-liquidated and 60,000 approximately were liquidated
10 loans.

11 Q Thank you.

12 Now let's talk a little bit about basics. What is a
13 liquidated loan?

14 A Roughly speaking just think of it as a loan where the
15 underlying property has gone through foreclosure and the
16 property has been sold.

17 Q And in contrast what is a non-liquidated loan?

18 A That would just be the (indiscernible) of the
19 liquidated loan, so a loan that is -- has not been
20 liquidated and, hence, it -- it could be severely
21 delinquent. It could be in foreclosure, but it -- the loss
22 on the loan has not been recognized yet by the trustees.

23 Q Would it be fair to characterize a non-liquidated loan
24 as a performing loan?

25 A Some of them may be performing, but some may be

1 severely delinquent, some may be what we refer to as re-
2 performing loans. In other words, if they were delinquent
3 in the past and then some modification of the terms of the
4 loan were made such that the borrower could then again begin
5 making payments.

6 So I wouldn't necessary classify all the non-
7 liquidated loans as being performing per se.

8 Q And specifically with regard to the approximately
9 15,000 non-liquidated loans that were the subject of your
10 analysis, would the description that you just provided be
11 true of our population of non-liquidated loans?

12 A That would be the case. You know, I think two-thirds
13 of them, of the non-liquidated loans had experienced some
14 type of modification. Thousands are currently delinquent
15 30, 60, 90 days and many plus 90 days delinquent.

16 Q Now you mentioned before as part of your affirmative
17 report you calculated a net purchase price --

18 THE COURT: Can I ask one clarifying question? In
19 the liquidated category --

20 THE WITNESS: Yes.

21 THE COURT: -- you gave the example of
22 foreclosure. Is it also possible that the loan was paid off
23 either through a refinancing or some other transaction other
24 than involuntarily through a liquidation?

25 THE WITNESS: Yes. So you could broadly think of

1 it that way. Typically I would refer to those as paid in
2 full loans --

3 THE COURT: Paid in full.

4 THE WITNESS: -- as opposed to -- the liquidated
5 loans that I have focused on are loans that have not paid in
6 full.

7 THE COURT: Okay. So liquidated does not include
8 paid in full loans?

9 THE WITNESS: Not in the universe that I have used
10 in my calculations.

11 THE COURT: Very good. Thank --

12 THE WITNESS: No.

13 THE COURT: -- you.

14 BY MS. BLACK:

15 Q You mentioned before that you calculated a net purchase
16 price for the non-liquidated loans, the population of
17 approximately 15,000. Can you describe how you went about
18 that?

19 A Yes. I looked at various documents to get an
20 understanding of how I might go about calculating a purchase
21 price that would be relevant for this particular proceeding.

22 Q I think you might have misunderstood my question.

23 A Okay.

24 Q And we'll get --

25 A I'm sorry.

1 Q -- to that. My question is you calculated a net
2 purchase price --

3 A Oh, the net --

4 Q -- for the --

5 A -- purchase price.

6 Q -- non-liquidated loans. How did you go about that --

7 A Oh, I'm sorry.

8 Q -- just generally speaking.

9 A Yes. So the net purchase price, I calculated a
10 purchase price and then subtracted from that an estimate of
11 the market value of the loan.

12 Q And where did you get that estimate of the market value
13 for the loan from?

14 A For the non-liquidated loans that were the subject of
15 my analysis counsel provided me a list of market value that
16 my understanding were generated by Dr. Elson.

17 Q Okay. And did you feel comfortable relying on those
18 market values that you were provided?

19 A I did. I didn't have any reason to think that they
20 would be unreliable. I reviewed Dr. Elson's qualifications.
21 I looked at the software program that he used to calculate
22 the loan values. It is a market-based program that is used
23 by professionals in the industry and is fairly well known,
24 so I had no reason to think that they were unreliable.

25 Q Now moving on to your rebuttal report can you just

1 briefly describe what you were asked to do in the context of
2 your rebuttal report?

3 A Yes. So Dr. Bradford Cornell submitted an affirmative
4 report where he relied upon two assumptions that were given
5 to him by counsel and I was asked by counsel for the
6 trustees to assess those two assumptions to see whether they
7 were reasonable from an economic standpoint.

8 Q And we will get -- we will get into those assumptions
9 in further detail later, but can you just briefly describe
10 what those assumptions were that you address in your
11 rebuttal report?

12 A Sure. There has been an assertion that the law
13 certificates and corporate expense logs associated with the
14 loan file are necessary to calculate a reliable purchase
15 price.

16 The second was that the trustees had not put forward a
17 reliable estimate of value of the non-liquidated loans and,
18 hence, the non-liquidated loan purchase price should be set
19 to zero.

20 Q Now moving on to your supplemental report can you
21 describe your mandate with respect to your most recent
22 report?

23 A Yes. The counsel for the trustees asked me to look at
24 accrued unpaid interest, interest that either the borrower
25 had failed to pay as part of their monthly mortgage payment

1 or had been advanced by the servicer, and to examine that in
2 terms of how much would be -- of that would be included in
3 the purchase prices that I had calculated as well as looking
4 at categories based on some temporal distinctions. Say, for
5 example, pre and post the petition in this matter.

6 Q Thanks.

7 Now I would like to walk through the opinions that you
8 have formed in this matter.

9 MS. BLACK: Can we please have TRDX-285?

10 BY MS. BLACK:

11 Q And starting again with your affirmative report -- let
12 me ask you a preliminary question. You have been involved
13 in numerous matters in which you were asked to calculate a
14 purchase price, correct?

15 A That is correct.

16 Q And in your experience what are the general components
17 of the purchase price?

18 A The general components of a purchase price, you know,
19 could potentially differ from trust to trust. But as a sort
20 of a general matter it includes three major components: The
21 unpaid principal balance, the balance that has not been paid
22 by the borrower or advanced by the servicer; the unpaid
23 accrued interest, again, interest that historically should
24 have been paid by the borrower but was not and was not
25 advanced by the servicer; and then any advances or payments

1 that the servicer makes on behalf of the borrower or to
2 manage the property and foreclosure, to mitigate losses,
3 servicing the loan, et cetera. It's an obligation that the
4 servicer has and that's part of why they are giving a
5 servicing fee s part of the securitization.

6 Q Thank you.

7 And we're going to talk about the individual components
8 in a little bit. For now I would like to understand what
9 did you -- and, by the way, is the -- your general
10 understanding from previous experience, including as a
11 testifying expert of the composition of the purchase price
12 consistent with your understanding of the composition of the
13 purchase price here?

14 A Yes, it is.

15 Q And what did you do to get yourself comfortable as to
16 what the proper composition of the purchase price was for
17 this matter?

18 A To understand how purchase price should be calculated
19 in this matter I first reviewed the protocol order which
20 detail -- which my understanding is detailed the process by
21 which the trustees would submit claims to the plan
22 administrator and then there was a process for either
23 approving or making a counter-proposal in terms of the
24 purchase price, et cetera.

25 In the protocol order it mentioned in a few places that

1 the purchase price should be calculated in accordance with
2 the governing agreements or the legal documents surrounding
3 the securitization. So my next step was then to review the
4 governing agreements for each of the securitization where
5 there were loans that I had been asked to calculate a
6 purchase price for. So I reviewed the purchase price
7 definition for each one of those trusts per their governing
8 agreements.

9 I then reviewed other filings in this matter, in
10 particular the motion to expunge and found statements
11 related to the calculation of purchase price.

12 Q And focusing on your starting point which was the
13 protocol order, what in the protocol order was it that
14 guided your understanding as to how purchase price should be
15 calculated in this case?

16 A I saw in the protocol order that it was a multi-step
17 process and in the first step it required the trustees to
18 calculate a purchase price for any loan for which they
19 wished to submit a claim in accordance with the governing
20 agreements.

21 Q All right. So let's take a look at the protocol order.

22 MS. BLACK: Can we have TRX-831?

23 BY MS. BLACK:

24 Q My first question to you is this the document that you
25 referred to as the protocol order?

1 A Yes, it is.

2 Q Okay. And let's go to page 11 of 24. And can you
3 point us to the language that you relied on in understanding
4 -- coming to an understanding as to how purchase price
5 should be calculated in this case?

6 A Yes.

7 (Pause)

8 A So in point number 4, roughly the middle of the page, a
9 calculation of the purchase price as defined in the
10 governing agreement with supporting documentation.

11 Q Thank you.

12 And was there anything else in the protocol order that
13 guided your understanding as to how purchase price should be
14 calculated?

15 A Yes. My understanding is in the next step of the
16 protocol was that after the trustees had submitted a claim
17 with a purchase price the plan administrator was to either
18 accept that or it was to make a -- in a sense a counter
19 proposal or make another calculation that they felt was more
20 appropriate in accordance with the governing agreements.

21 Q And can you point us to the language that you just
22 referred to?

23 A Okay. So in little i number one, for each approved
24 claim the plan administrator shall either approve the
25 purchase price or revise the purchase price calculation in

1 accordance with the formula in the governing agreement.

2 Q Okay. So with that in mind what was your next step in
3 getting yourself comfortable as to how purchase price should
4 be calculated?

5 A Well since the protocol order referenced that purchase
6 price should be calculated in accordance with the governing
7 agreements, and that has been my experience in literally
8 every RMBS case that I have worked on where I've been asked
9 to calculate purchase prices, I reviewed the governing
10 agreements.

11 Q And did you review the governing agreement for each and
12 every -- the governing agreements for each and every trust
13 that holds loans that you calculated a purchase price for?

14 A Well, I can't say that I reviewed every single, you
15 know, page of the governing agreements, but I went to the
16 purchase price definition for -- in the governing agreements
17 for each and every one of the trusts.

18 Q And generally speaking was the definition of purchase
19 price in the various governing agreements consistent?

20 A Yes. It -- every one of the purchase price definitions
21 in the governing agreements had the three components that
22 we've talked about: Unpaid principal balance, accrued
23 interest -- accrued unpaid interest and servicing fees and
24 advances.

25 Q Okay. So I would like to look at an example. Can we

1 please have TRX-201? I have put up on the screen a trust
2 agreement from the LXS 2615 trust. Do you recognize this
3 document?

4 A I do.

5 Q And is this one of the trusts that consists of loans
6 that were the subject of your analysis?

7 A It is.

8 Q Okay. So let's turn to page 57 of 222.

9 Dr. Snow, you see here at the bottom there is a
10 definition of purchase price. Is this a representative
11 example of the definition of purchase price that you looked
12 at in the context of your charge here?

13 A It is. It's very similar to the other definitions of
14 purchase price that I saw. It contained the three major
15 elements: A hundred percent of the unpaid principal
16 balance, accrued interest, thereon at the applicable
17 mortgage rate, and unreimbursed servicer advances.

18 Q And you mentioned earlier that you also --

19 THE COURT: Can I ask a -- just a clarifying --

20 THE WITNESS: Uh-huh.

21 THE COURT: -- purely a clarifying question.

22 THE WITNESS: Sure.

23 THE COURT: And you might get to this, and if you
24 are we can move on. But to the extent that there has been a
25 mortgage modification on a voluntary basis between a

1 borrower and a lender, and mortgage modification can take
2 any one of an infinite number of forms, how does that factor
3 in when you -- to the application of purchase price since at
4 least in this definition there's no specific proviso or
5 provision that tells you what to do?

6 THE WITNESS: Okay. I can address that question.

7 This says unpaid principal balance --

8 THE COURT: Yes.

9 THE WITNESS: -- so if there was, say, principal
10 forgiveness --

11 THE COURT: Yes.

12 THE WITNESS: -- that would still be principal
13 balance that was unpaid.

14 THE COURT: Okay.

15 THE WITNESS: Now with -- so that would be say
16 with the principal modification.

17 THE COURT: Sure. Right.

18 THE WITNESS: If there was say like a term
19 modification, the loan was extended for 30 years, that is
20 not something that I took into account.

21 THE COURT: Okay.

22 THE WITNESS: One could make an argument that
23 there might be a loss there because the -- you know,
24 principal --

25 THE COURT: Well, I guess my --

1 THE WITNESS: -- would be coming in the future.

2 THE COURT: Right. So my question is if the
3 interest rate were lowered --

4 THE WITNESS: Ah.

5 THE COURT: -- what --

6 THE WITNESS: So that --

7 THE COURT: -- what happens if the interest rate
8 is lowered?

9 THE WITNESS: That -- that's a good question in
10 that --

11 THE COURT: Thank you.

12 THE WITNESS: -- in that you'll notice here it
13 says, at the applicable mortgage rate.

14 THE COURT: Yes.

15 THE WITNESS: So it often is dependent upon the
16 specific securitization because that's a defined term. In
17 some -- and sometimes that will not be a defined term.
18 Sometimes it is. So in my calculations because there was
19 some heterogeneity in terms of how that was treated, I did
20 not include losses associated with or accrued unpaid
21 interest that you could assign to a reduction in a
22 modification of an interest rate.

23 So in that sense they were conservative for some
24 trusts. For other trusts the language would basically --
25 you would look at mortgage rate and it would say the current

1 mortgage rate. So it -- it would be trust specific.

2 THE COURT: Very good. Thank you. That was very
3 helpful.

4 BY MS. BLACK:

5 Q Dr. Snow, I would like to now talk about the filings
6 that you undertook to get yourself comfortable with how you
7 should calculate purchase price in this matter and what the
8 appropriate components of the purchase price are. I believe
9 you had mentioned the plan administrator's motion to
10 expunge. Can you explain?

11 A Yes. I read various documents related to this matter
12 and saw in the motion to expunge that the plan administrator
13 had put forth, again, a general definition of purchase price
14 which was consistent with what I saw in the protocol order
15 and consistent with what I saw in the purchase price
16 definitions in the governing agreements.

17 Q Okay. And let's just look at that.

18 MS. BLACK: Can we have TRX-875, please?

19 BY MS. BLACK:

20 Q Is this the plan administrator's motion to expunge that
21 you relied upon in coming to that understanding?

22 A It is.

23 Q Okay. And let's pull up page 15 of 26. And can you
24 point us to the language that gave you comfort that you
25 should calculate purchase price consistent with how you had

1 done it in other engagements?

2 A Okay. It's the last full sentence on the last
3 paragraph starting with, although, and this is consistent
4 again with what I've described across the different
5 governing agreements. The precise definition does vary at
6 the margins, but it typically is the sum of unpaid principal
7 balance or UPB of the mortgage loan, accrued interest
8 outstanding at the time of repurchase and outstanding
9 service fees or the servicing advances.

10 Q And was there any other filing or submission by the
11 plan administrator that informs you or that confirms your
12 understanding as to how purchase price should be calculated
13 in this matter?

14 A Yes. After submitting my initial report I also saw a
15 motion to establish a protocol submitted by the plan
16 administrator.

17 Q And that was similar language?

18 A And it had similar language to what I saw in the motion
19 to expunge.

20 Q Okay. And so let's just look at that. Also --

21 MR. COSENZA: Your Honor --

22 THE COURT: Yes.

23 MR. COSENZA: -- I object to this slide. I think
24 it's misleading. This was the cross-motion to establish the
25 protocol and this paragraph was in response to the motion

1 made by the trustees to estimate the claims based on their
2 sample and to include the reserve. This is not a paragraph
3 that was in response to -- that was in support of our motion
4 to establish the protocol. This was a cross-motion for us
5 to establish the protocol, but this paragraph 83 is in
6 response to the trustees' initial motion to use their sample
7 to increase the reserve and estimate the claims at over \$12
8 billion.

9 THE COURT: I guess I -- okay.

10 MR. COSENZA: Yeah.

11 THE COURT: But what difference does it make, Mr.
12 Cosenza?

13 MR. COSENZA: Well, it's just the motion to
14 establish protocol was actually -- this was the part that
15 was in opposition to the motion where the trustees were
16 seeking estimation.

17 THE COURT: Okay. So we will deem the slide --

18 MR. COSENZA: Okay.

19 THE COURT: -- to correct it in that way.

20 MR. COSENZA: Thank you, Your Honor.

21 THE COURT: But otherwise you're not taking issue
22 with the text that's quoted?

23 MR. COSENZA: No, Your Honor.

24 THE COURT: Okay. Go ahead.

25 MS. BLACK: And since Mr. Cosenza already

1 addressed the slide, why don't we just pull it up? The
2 motion to establish protocol, just for you to confirm that
3 that is the language that you relied upon. Can we have the
4 slide?

5 BY MS. BLACK:

6 Q Is this the language in the motion to establish
7 protocol that enhances your understanding as to how purchase
8 price should be calculated in this matter?

9 A Yes. Again, these statements are consistent with what
10 I had seen both in the protocol order and in the governing
11 agreements that the purchase price consisted of typically
12 those three major elements, unpaid principal balance,
13 accrued interest and unreimbursed servicing advances.

14 Q Thank you.

15 Now I would like to talk about the individual
16 components of the purchase price.

17 MS. BLACK: Can we have TRDX-290, please?

18 BY MS. BLACK:

19 Q And focusing on the first element, unpaid principal
20 balance, can you just broadly explain to us what unpaid
21 principal balance is?

22 A Okay. So when the borrower takes out the mortgage and
23 receives money they are required to pay the principal back
24 in full. And so this represents the amount of unpaid
25 principal balance or balance -- the principal that has not

1 yet been repaid by the borrower or advanced by the servicer.

2 Q And what about unpaid accrued interest?

3 A Okay. This is interest historically, so if the
4 borrower misses a payment and part of that payment was
5 interest and part of the payment is principal, then that
6 part that is interest would then become accrued unpaid
7 interest. It was interest that was owed on the mortgage and
8 wasn't paid and wasn't advanced by the servicer either.

9 Q So to be clear is the interest that is a component of
10 the purchase price interest on the trustees' claim in this
11 proceeding?

12 A No. It is a calculation of the purchase price or
13 monies that the trust was entitled to receive from the
14 borrower, but didn't. So, for example, suppose that a
15 borrower had a \$2,000 monthly mortgage payment, 1,200 of
16 which was interest and 800 which -- of which was principal.
17 So if they missed one payment, then the accrued unpaid
18 interest would be \$1,200. If they missed the next month the
19 accrued unpaid interest would become \$2,400. But there
20 wouldn't be any additional interest paid on the first \$1,200
21 missed. It would just cumulate from that point.

22 Q So it is -- would it be fair to say that it is not
23 compound interest. It's accumulated interest?

24 A Yes. It's accumulating the interest.

25 Q Okay. And from an economic point of view why are

1 unpaid principal balance and accrued unpaid interest a part
2 of the purchase price?

3 A Well, I think to understand it from an economic
4 perspective it's important to understand the economic
5 perspective behind a representation and warranty in a
6 mortgage securitization.

7 So the trust is effectively buying the mortgages or the
8 -- you know, the trust, ergo the certificate holders.

9 Right. They're putting up the money which is financing the
10 mortgages. When they do that they agree to take on the risk
11 associated with conforming or loans that conform to the
12 representations and warranties. They don't agree to take on
13 the risk associated with loans that don't conform. That's
14 the representation and warranty and that's why there's a put
15 back mechanism.

16 So you can view the purchase price as once a loan has
17 been determined to materially breach the representations and
18 warranties that you're in a sense reimbursing the
19 certificate holders and trust for any losses that have
20 occurred on liquidated loans. So that would be unpaid
21 principal balance and interest that the borrower should have
22 paid prior to liquidation, but didn't, or for a non-
23 liquidated loan it's doing the same thing, reimbursing for
24 any unpaid principal balance that should have been paid and
25 likewise for interest, but also the remaining unpaid

1 principal balance, in a sense putting back the mortgage to
2 the sponsor or the originator so that the sponsor or
3 originator will then take on the risk of that loan, and the
4 trust and the certificate holders then have been reimbursed
5 for the money in the sense that they lent out to begin with.

6 MS. BLACK: Can we have Slide 89 from the plan
7 administrator's opening deck?

8 BY MS. BLACK:

9 Q Dr. Snow, are you aware that the plan administrator has
10 argued to this court that the purchase price proffered by
11 the trustees through you is not equitable because it fails
12 to account for billions and billions of dollars in interest
13 payments that the trust have received over the years?

14 A I'm aware of the argument. Yes.

15 Q And what do you make of this argument?

16 A I really don't understand the argument because I think
17 that exactly the opposite is true. When a borrower makes a
18 payment, right, and if they keep making the payment and
19 let's say they pay off their loan, then the purchase price
20 is zero. There's no unpaid interest. There's no unpaid
21 principal balance.

22 So the purchase price is only accounting for what
23 didn't get paid. What did get paid doesn't function --
24 doesn't figure into the calculation of the purchase price
25 other than it's reducing the unpaid principal balance and

1 keeping current on the interest payments that the borrower
2 is supposed to make.

3 Q So no double recovery?

4 A No. There's no double recovery. This is just recovery
5 for monies or cash flows that should have been paid by the
6 borrower but were not.

7 Q Can we go back to TRDX-290, please? Now moving onto
8 the third element, unreimbursed servicer advances, I know
9 you touched upon it earlier. Can you explain what these
10 are?

11 A Okay. So as I explained earlier the servicer in its
12 role as servicer for the securitization is paid a servicing
13 fee to service the loans. But part of that servicing fee is
14 also to ensure that they fulfill a responsibility which is
15 if a -- if there is a temporary halt in the payment of a
16 mortgage, the borrower goes delinquent 30, 60, 90 days, that
17 the servicer will advance the money. And essentially it's a
18 loan to the trust. They pay for it on behalf of the
19 borrower, but then the servicer takes essentially an I owe U
20 that the trust then will have to repay the borrower, say
21 from the liquidation proceeds of a loan if it ever
22 liquidates or if the borrower fully catches up from those
23 funds.

24 So this is done so that the cash flows of the
25 securitization don't fluctuate do to typically minor --

1 minor hiccups in the payments of mortgages.

2 So those monies that are advanced as well as expenses
3 that the servicer incurs in say maintaining the property in
4 foreclosure, to mitigate losses, those are monies for which
5 the servicer is supposed to be compensated and, hence, the
6 trust -- if the trust receives the purchase price for the
7 loan, part of that has to go back to the servicer if there
8 are unreimbursed servicing advances.

9 Q So in that sense is the trust the pass through?

10 A The trust is purely a pass through and you -- and you
11 see this in the definition of purchase price; that it
12 sometimes will say that the trust -- trustee must pay the
13 servicer the unreimbursed advances out of any purchase price
14 if the loan is put back.

15 Q Can we go back to TRDX-285, please? Going back to the
16 summary of your opinions, what data did you rely on for the
17 three components of the purchase price?

18 A So in order to determine the purchase price, and this
19 is similar to, again, other matters in which I've calculated
20 purchase price I relied on monthly loan level data that is
21 produced by the master servicer typically as well as the
22 monthly trustee remittance reports. And where the data
23 wasn't -- was missing sometimes for certain loans it was
24 supplemented with data from Moody's or Intex which are
25 common -- commonly used data providers on mortgage

1 performance.

2 Q And why were you comfortable relying on such data?

3 A One, this is data that is made public and, in
4 particular, to investors and this data is what determines
5 the distribution to the investors and also determines what
6 losses they will or will not suffer on their certificates.
7 So it goes through a fair amount of scrutiny.

8 Second, in my experience I have tried to tie out the
9 loan level data -- loan level monthly servicing data, right,
10 which is disaggregate with the aggregate data recorded by
11 the -- in the trustee remittance report. So you can view it
12 as -- the loan level servicing data is detailing the cash
13 flows that come out of the mortgages on a loan by loan basis
14 and the trustee remittance report will say, here's the
15 aggregate amount of principal and interest that came into
16 the trust which then will flow through the distribution, the
17 waterfall rules, to the investors.

18 I've tidied this out in, you know, two to three hundred
19 instances and the data is almost always perfectly
20 consistent. And that's not surprising because, again, this
21 data has a fair amount of scrutiny because it's what
22 investors are relying on to make sure that the trustee is
23 doing the correct thing in terms of their distributions.

24 Q Thank you.

25 MS. BLACK: Can we have TDX-291, please?

1 BY MS. BLACK:

2 Q Dr. Snow, did you calculate purchase price the same way
3 for non-liquidated loans and liquidated loans?

4 A Conceptually, yes, but in practice for liquidated loans
5 the master servicer will also publish a summary statistic
6 which is effectively the sum of the unpaid principal
7 balance, the accrued unpaid interest and the unreimbursed
8 servicer advances. This is because when a loan liquidates
9 the liquidation proceeds are used to first pay the
10 unreimbursed servicer advances, then any unpaid accrued
11 interest, and then if there's anything left over the unpaid
12 principal balance. And the master servicer then just
13 reports what's left over.

14 Q Is there any logic to this waterfall that you just
15 described in which liquidation proceeds are applied?

16 A Absolutely. One, the servicer advances because it's,
17 in effect, a loan to the trust. There's an obligation to
18 repay it so they're kind of at the top of the waterfall.

19 The second is, you know, accrued interest and whether
20 something is treated as interest or principal matters in
21 terms of the securitization. And so interest is often paid
22 pro rata to the certificate holders whereas balance -- the
23 un -- the principal that comes in may be paid to say the
24 senior certificate holders before it's paid to the junior
25 certificate holders.

1 So there's a logic in this waterfall and it makes
2 economic sense.

3 Q And is there any predicate for this waterfall in the
4 governing agreements? In other words, is there anything in
5 the governing agreements that -- that describes this
6 waterfall?

7 A Yes. One -- the defining term in virtually all of the
8 governing agreements is realized loss. And if you look at
9 the realized loss definition it will often say that in our
10 calculating realized loss which is the sum of these three
11 items how liquidation proceeds should be treated.

12 Q Okay. I would like to look at an example.

13 MS. BLACK: Can we have TRX (indiscernible),
14 please? This is the trust agreement for LXS-2615 that we
15 had previously looked at. And can we go to page 60 of
16 (indiscernible)?

17 BY MS. BLACK:

18 Q Dr. Snow, we have the definition of realized loss in
19 front of us now. Can you point us to where in this
20 definition of realized loss one would find waterfall?

21 A Yes. So in the last sentence in determining whether a
22 realized loss is a realized loss of principal, so in other
23 words are there sufficient proceeds to reduce the unpaid
24 principal balance liquidation proceeds shall be allocated,
25 first, the payment of expenses related to liquidated

1 mortgage loan or in other words the servicer advances and
2 expenses, then accrued unpaid interest and then finally to
3 reduce the principal balance of the mortgage loan.

4 Q And is this a representative example of a definition of
5 realized loss that you have seen throughout the governing
6 agreements applicable to the trusts holding loans that you
7 calculated a purchase price for?

8 A It is.

9 Q So with that definition in mind can we have TRDX-292,
10 please?

11 Dr. Snow, I understand that this is a demonstrative
12 that you assisted in putting together to illustrate the
13 point. And I would ask you to walk us through what we see
14 on this slide.

15 A Sure. So this is a -- an example of how liquidation
16 proceeds would be allocated according to the waterfall rule
17 that we've just discussed. So imagine a property goes
18 through foreclosure. It's sold, hence the loan is
19 liquidated. The liquidation proceeds again are assumed to
20 be \$200,000. Well, the first thing that is paid from those
21 liquidation proceeds are the service -- servicer expenses
22 and advances.

23 So let's suppose that the expenses related to the
24 liquidation, whether they're attorney fees or maintaining
25 the property were \$10,000 and that the unreimbursed

1 servicing advances were \$30,000. So that first \$40,000
2 would be paid out of the liquidation proceeds, which would
3 leave us with net liquidation proceeds at that point of
4 160,000.

5 Then if there is accrued unpaid interest, the
6 liquidation proceeds would be applied for that account. So
7 in this example, \$50,000 would be used out of the
8 liquidation proceeds to retire the unpaid accrued interest
9 account. Now we're left with net liquidation proceeds of
10 110,000 and supposing that the UPD or unpaid principal
11 balance is 150,000, the \$110,000 would then be treated as
12 principal to reduce that unpaid principal balance leaving a
13 realized loss of \$40,000.

14 Q Thank you.

15 I would like to move on now to the purchase prices that
16 you calculated. Let's talk numbers.

17 MS. BLACK: Can we have TRX-689, please?

18 BY MS. BLACK:

19 Q Dr. Snow, do you recognize this --

20 A I --

21 Q -- spreadsheet?

22 A I do. It was an exhibit to my affirmative report.

23 Q And can you explain generally speaking what is this
24 spreadsheet?

25 A This spreadsheet, in particular Column L, contains my

1 purchase price calculation for the roughly 75, 76,000 loans
2 for which I was asked to calculate a purchase price.

3 Q And what is the aggregate purchase price that you
4 calculated for the roughly 76,000 liquidated and non-
5 liquidated loans?

6 A Okay. So since you've highlighted Column L, you can
7 see down below Column L there's the sum which is \$14.6
8 billion.

9 Q Thank you.

10 MS. BLACK: And, Your Honor, we have a screen
11 capture of the spreadsheet in the deck --

12 THE COURT: Okay.

13 MS. BLACK: -- at TRDX-295.

14 THE COURT: Okay. Great.

15 BY MS. BLACK:

16 Q Now moving on to liquidated loans what was the
17 aggregate purchase price that you calculated for the
18 liquidated loans? And let's -- let's stay on the
19 spreadsheet, please.

20 A Okay. So we can use the same spreadsheet to get that
21 amount. So we would now go to Column D and filter just on
22 the liquidated loans so that we would be showing only the
23 liquidated loans. And, again, if we highlight Column L and
24 look at the sum down at the bottom we see that that sum is
25 roughly \$9.2 billion.

1 Q And that is for approximately how many liquidated loans
2 within that universe of 76,000?

3 A A little over 60,300.

4 Q Thank you.

5 MS. BLACK: And, Your Honor, again, we have a
6 screenshot of the spreadsheet at TRDX-296 in your deck.

7 THE COURT: Very good.

8 MR. COSENZA: Your Honor, I'm -- I'm just --

9 THE COURT: Yeah.

10 MR. COSENZA: -- not to slow things down, are
11 there -- I'm having trouble on the screenshots getting --
12 seeing on our screen the actual totals.

13 THE COURT: If you look at the bottom, Mr. Cosenza
14 --

15 MR. COSENZA: Oh, I see.

16 THE COURT: -- of my screen you see average count
17 and then sum?

18 MR. COSENZA: Okay. Bad eyesight. I see it.
19 Thank you.

20 MS. BLACK: That is, among others, why we have
21 this as well --

22 (Laughter)

23 MS. BLACK: -- of offering the slides because it's
24 difficult to see.

25 BY MS. BLACK:

1 Q So moving on to the non-liquidated loans can we perform
2 the same exercise?

3 A We can perform the same exercise with Column B. Now we
4 just filter on the non-liquidated loans as opposed to the
5 liquidated loans. And we see that there are roughly 15,000
6 liquidated loans -- non-liquidated loans and that the
7 purchase price for those loans is roughly \$5.4 billion.

8 Q Thank you.

9 MS. BLACK: And, again, we have a screen capture
10 in the back as TRDX-297.

11 BY MS. BLACK:

12 Q Now for the non-liquidated loans how is the number, the
13 \$5.38 billion number arrived at if you look at the
14 spreadsheet?

15 A Generally speaking it's just summing up the components
16 that we have in Columns F through J. So the unpaid
17 principal balance, the corporate advance balance, the escrow
18 advance balance, the principal advance balance and then the
19 accrued and advanced interest.

20 Q Thank you.

21 And not everyone might be familiar with these terms, so
22 maybe you can just walk us through what these terms mean.
23 What is the corporate advance balance?

24 A So these would be advances made in the day to day
25 working -- day to day servicing of the loan, expenses that

1 the servicer is bearing.

2 Q Would that include expenses related to maintaining the
3 property during foreclosure or expenses related to the
4 liquidation of the property?

5 A Yes. For liquidated loans that would be the case.

6 Q Okay. And moving on to the next column, escrow advance
7 balance, what is that?

8 A Well, this is the escrow component of the mortgage
9 payment, the insurance property taxes component that the
10 servicer is advancing.

11 Q To the extent that they are rolled into the mortgage?

12 A To the extent that they are rolled into the mortgage.

13 Q Okay. And then I believe the next two columns are
14 probably pretty self-explanatory, but why don't you go ahead
15 and explain?

16 A Sure. The Column I is the principal advanced by the
17 servicer and then Column J is both the interest advanced by
18 the servicer as well as accrued unpaid interest from the
19 borrower that was not advanced by the servicer.

20 Q And you broke that out further in Columns N and O?

21 A That is correct. So those two amounts are disentangled
22 at the right-hand side of the spreadsheet.

23 THE COURT: Can I just clarify, there's an
24 indication on the upper left that these are the purchase
25 prices as of the end of April 2017.

1 THE WITNESS: That is correct.

2 THE COURT: So in the very first row that we see
3 which is -- appears to be Row 18 on the spreadsheet we have
4 a loan that looks like it's from a 2002 trust.

5 THE WITNESS: That's correct.

6 THE COURT: Right. So the purchase price of
7 \$153,000 represents 15 years of stuff related to this
8 particular loan?

9 THE WITNESS: Yes and now. It depends -- I guess
10 it depends on what we mean by stuff. So it could --

11 THE COURT: Well, you have the columns here.

12 THE WITNESS: Yes.

13 THE COURT: The corporate -- the unpaid principal
14 balance, the corporate advance, the accrued and unpaid
15 interest, everything that still remain --

16 THE WITNESS: Correct, after 15 years and that --

17 THE COURT: -- after 15 years.

18 THE WITNESS: -- that could have occurred over the
19 entire 15 year -- it could have occurred over the last six
20 months in the sense that the borrower went delinquent
21 recently and stopped making payments and that's what those
22 numbers reflect. I == I don't have that level of detail
23 within this data so I can't say exactly when these things
24 occurred. But --

25 THE COURT: Thank you.

1 THE WITNESS: Well, I can with respect to the
2 principal and interest which --

3 THE COURT: Okay.

4 THE WITNESS: -- I'll talk about a little later
5 on.

6 THE COURT: Okay. Thank you.

7 BY MS. BLACK:

8 Q For non-liquidated loans you broke the purchase price
9 up into its individual elements including the interest
10 component, but for liquidated loans you presented the
11 realized loss number without breaking out interest. Why?

12 A Right. So could we go to the -- filter on the
13 liquidated loans?

14 Okay. So here you'll see for the liquidated loans we
15 don't have the breakout of the servicer advances, the
16 principal advances, et cetera, but what we do have is a
17 realized loss number. And, again, as I discussed earlier
18 that realized loss number is rolling all of these components
19 into one. It is the amount of unpaid servicer advances and
20 expenses accrued unpaid interest and unpaid principal
21 balance that remains after the liquidation proceeds have
22 been applied per the waterfall rules that we talked about.

23 Q You told us earlier about the various documents that
24 you reviewed in getting yourself comfortable how purchase
25 price should be calculated in this matter. Was there

1 anything that you had seen in the materials that you relied
2 upon that gave you reason to believe that you needed to
3 break out interest on the liquidated loans?

4 A No. There was nothing I saw in the documents. There
5 was nothing I saw in opposing expert reports that indicated
6 that for a liquidated loan it would be necessary to break
7 out these components individually, rather than this could
8 be used as a summary statistic for the purchase price.

9 Q And you submitted your purchase price calculations with
10 your affirmative report. What was the response of the plan
11 administrator's experts to your calculations of purchase
12 price?

13 A To my knowledge no one has rebutted my calculations.

14 Q And did that surprise you?

15 A No. It didn't particularly surprise me. This -- as
16 you can see once you've determined the components or
17 identified the correct data is a somewhat straightforward
18 calculation.

19 Q Did any of the plan administrator's experts have any
20 response in any of their reports to your purchase price
21 calculations?

22 A Yes. Dr. Cornell in his reply report actually adopted
23 my numbers and testified at his deposition that if there had
24 been errors in my calculations he would not have adopted them.
25 and that he did look for such errors.

1 Q Did he adopt your numbers for liquidated loans, non-
2 liquidated loans or both?

3 A For both.

4 Q And was there any set of loans for which Dr. Cornell
5 independently calculated a purchase price rather than
6 adopting your numbers?

7 A Yes, There was a small set of loans that had
8 liquidated -- that were non-liquidated in April of 2017 that
9 subsequently liquidated and that he calculated a purchase
10 price as of their -- as of August. And he used the realized
11 loss number that was reported by MBS data which is something
12 akin to Moody's or Intext which again is consistent with the
13 data published by the master servicer.

14 Q And in doing so did he break out or net out the
15 interest component?

16 A No. He did not. He just report the realized -- the
17 purchase price as being equal to the realized loss number as
18 reported in the MBS dataset.

19 MS. BLACK: I would like to have TRX-690, please?

20 BY MS. BLACK:

21 Q Dr. Snow, I've put a different spreadsheet up on the
22 screen. I neglected to ask you a question of my -- again,
23 it might not be obvious to everyone in this courtroom. Can
24 you explain what you mean by MBS data?

25 A Sure. So MBS data is just the name of a dataset that

1 contains loan level loan performance data on many -- on the
2 loans that are at issue in this matter.

3 Q And is it your understanding that it is a subscription
4 service similar to the subscription services that you are
5 used to using in gathering data for calculating purchase
6 prices?

7 A Yes. It's similar to Moody's. It's similar to Intex.
8 That data, my understanding is, it's essentially coming from
9 the same place that publicly reported data published by the
10 trust administrator or the master servicer.

11 Q Thank you.

12 Now moving on to the spreadsheet that we have on the
13 screen, do you recognize this spreadsheet?

14 A I do.

15 Q And what is it?

16 A This is a spreadsheet that I calc -- that I created
17 again as part of my expert -- my affirmative expert report
18 which calculates the -- what I refer to as the net purchase
19 price.

20 Q And can you explain what is the net purchase price and
21 how do you arrive at it?

22 A Well, Column E has the purchase price for the non-
23 liquidated loans. And this is the same numbers that we
24 would have seen if we had just filtered on non-liquidated
25 loans in the previous spreadsheet.

1 Column F contains value -- estimates of the market
2 value of the loans as supplied to me through counsel from
3 Mr. -- from Dr. Elson. And then Column G is just the
4 difference between Column E and Column F. So it is the
5 purchase price after accounting for the value of the loan.

6 And I -- my understanding is that this calculating
7 -- I was asked to do this calculation because the plan
8 administrator may not take the loans -- the breaching loans
9 back and hence it may be economically appropriate to
10 compensate the plan administrator for the fact that the
11 trustees will keep the loans.

12 Q Are your purchase price calculations in any way
13 dependent on Dr. Elson's values?

14 A No. So column -- the numbers in Column E do not depend
15 at all on the numbers in Column F. Those are independent
16 calculations. In fact the purchase price is a -- in many
17 ways a backward looking calculation. It says, as of a point
18 in time what historically has not been paid either in terms
19 of principal or interest or reimbursements to the servicer.

20 Whereas, Column F is a forward looking calculation. It
21 is what are the expected cash flows and conversely the
22 expected losses associated with the loan into the future.

23 Q Okay.

24 MS. BLACK: Your Honor, I am at a breaking point.
25 I am happy to proceed or I don't know if --

1 THE COURT: Hopefully you're at a stopping point
2 and not a breaking point.

3 (Laughter)

4 THE COURT: A stopping point. Can you just give
5 me one second? Are you --

6 MS. BLACK: Absolutely.

7 THE COURT: -- going to be continuing on this
8 slide?

9 MS. BLACK: Not on this slide, so let's put it --

10 THE COURT: Could you put --

11 MS. BLACK: -- up again?

12 THE COURT: -- the slide back on for one second?

13 MS. BLACK: That's what happens when you have a
14 note -- a non-native speaker in the courtroom.

15 THE COURT: You're speaking far better than any of
16 us. If I could just try to understand, make sure I
17 understand what you just said, Dr. Snow.

18 THE WITNESS: Okay.

19 THE COURT: So let me look at the loan that's
20 about seven down that's a million dollars. It's loan number
21 ending 617. Yes. Line 11. Thank you.

22 So what you said was the purchase price is the
23 combination of the three components or the -- if you get
24 more granular the components that we saw before.

25 THE WITNESS: Correct.

1 THE COURT: And that's not dependent on anything?

2 THE WITNESS: On any --

3 THE COURT: And then --

4 THE WITNESS: On any future event.

5 THE COURT: On any future event.

6 THE WITNESS: Right.

7 THE COURT: Okay. And then Column F is some
8 prediction if you will of if the property sells what you
9 would --

10 THE WITNESS: Well, it would --

11 THE COURT: -- net against the purchase price?

12 THE WITNESS: It -- that will be part of the
13 inclusion, but it's really what cash flows do we expect to
14 come from the mortgage. So part of it would be how many
15 payments do we expect the borrower to make? And if the
16 borrower -- there's some probability that the borrower might
17 default and, if so, what do we expect to recover from that.
18 So it is an expectation of the cash flows generated by the
19 loan.

20 THE COURT: And that's credited against the
21 purchase price so that the plan administrator doesn't
22 overpay so to speak?

23 THE WITNESS: Correct. So that they are
24 reimbursed for the value of those cash flows.

25 THE COURT: Well, I'm trying to understand the

1 scenario in which the purchase price would be over a million
2 dollars and the expected cash flows would be a quarter of a
3 million dollars. I'm just trying to understand what that
4 might look like. You -- you don't have a view about what
5 that loan looks like or what the history of it is or what --
6 what's driving those numbers other than the aggregate number
7 that yields the purchase price?

8 THE WITNESS: Yes and no. For that particular
9 loan I can only hypothesize. I -- we do have the loan level
10 data that would tell us, you know, we could look at the
11 history of this loan--

12 THE COURT: So one hypothesis for this loan was --
13 I obviously have no idea. But a hypothesis would be that it
14 went into default almost immediately --

15 THE WITNESS: Yes.

16 THE COURT: -- in 2007. And who knows what the
17 original mortgage amount was, but low and behold here we are
18 and the purchase price is a million dollars.

19 THE WITNESS: Right.

20 THE COURT: And the market value of the property
21 is a quarter of a million dollars. That's a hypothesis.

22 THE WITNESS: That is a hypothesis. Right.

23 THE COURT: Okay.

24 THE WITNESS: And we expect to get very little in
25 terms of the payments, but there is a -- there's collateral

1 sitting underneath the --

2 THE COURT: Something there.

3 THE WITNESS: -- mortgage.

4 THE COURT: Okay.

5 THE WITNESS: That would be one scenario.

6 THE COURT: Right. But we don't know.

7 THE WITNESS: We don't know.

8 THE COURT: Okay. All right.

9 Now would be a great time to take a break.

10 MS. BLACK: Thank you.

11 THE COURT: How much time would you like?

12 MS. BLACK: Ten, ten minutes.

13 THE COURT: Sure. Okay. Ten minutes. Dr. Snow,
14 you remain under oath the entire time that you're giving
15 your testimony. Please do not discuss the case or your
16 testimony with anyone or be in anyone's presence while
17 they're doing the same.

18 THE WITNESS: I will do so.

19 THE COURT: All right. Thank you.

20 (Recess taken at 2:57 p.m.; reconvened at 3:17 p.m.)

21 THE COURT: Have a seat, please.

22 BY MS. BLACK:

23 Q Dr. Snow, I would actually like to go back to the
24 spreadsheet that we had looked at before the break and ask a
25 couple of follow up questions on that spreadsheet.

1 MS. BLACK: Can we have TRX-690, please?

2 BY MS. BLACK:

3 Q So the Court asked you about this loan, Loan Number
4 121820617 which has a purchase price that you calculated at
5 a little over a million dollars and a market value
6 calculated by loan schematics off about a quarter a million
7 dollars.

8 With that loan in mind and perhaps we can just pull up
9 so we can look at them simultaneously we can look at this
10 loan in the deck. It's TRX-298, 911, and let's pull up a
11 different spreadsheet on the screen, TRX-2726 which is
12 Exhibit 1 to your supplemental report.

13 A Okay.

14 Q And specifically go to line, I believe it is line 55.

15 MS. BLACK: Can we highlight that and also make it
16 a little larger?

17 (Pause)

18 BY MS. BLACK:

19 Q And, Dr. Snow, can you confirm that this is the same
20 loan?

21 A It appears to be the same loan.

22 Q Okay. And do you remember that the court asked you
23 what possible reason there could be that there would be so
24 much in purchase price versus only a quarter of a million in
25 the market value. Can you see in here at what point in time

1 this borrower last made a payment on the loan?

2 A Yes. That would be in Column F, the next due date.

3 Q And so when was that?

4 A So it would be that they made a payment in September of
5 2010.

6 Q So this loan has been delinquent since October of 2010?

7 A That is correct.

8 Q And is it possible that this loan had previous
9 modifications even prior to October of 2010?

10 A It is possible.

11 Q So in this case the borrower has not made payments for
12 over seven years?

13 A That is correct and that would explain why the accrued
14 and advanced interest in Column K is as large as it is.

15 Q And nonetheless this is a non-liquidated loan within
16 our pool?

17 A Correct.

18 Q Even though it has not been performing for over seven
19 years?

20 A That is correct. There could be a whole host of
21 reasons as to why it hasn't formally liquidated.

22 Q Now going back to TRX-690, please, the schedule of net
23 purchase prices to your affirmative report, and I may have
24 asked you before but just so we have it clearly on the
25 record, so the purchase price that you calculated for the

1 non-liquidated loans as we had seen in a previous
2 spreadsheet and we can see it on this spreadsheet if we
3 place the cursor over Column A -- I'm sorry, Column E, I
4 apologize --

5 A Yes.

6 Q -- is 5. -- roughly \$5.4 billion.

7 A Yes.

8 Q Okay. And that is the aggregate purchase price that
9 you calculated for all of the non-liquidated loans?

10 A That is correct. That's consistent with the
11 spreadsheet that we looked at earlier.

12 Q Okay. And let's just look at what is the aggregate
13 market value calculated by Dr. Elson for these loans? And
14 what is that?

15 A Roughly three billion.

16 Q And from there you calculated a net purchase price for
17 the non-liquidated loans and how much is that?

18 A Again, roughly 2.4 billion.

19 Q And just so we are clear you did the account -- I
20 believe you had mentioned that before you did that to
21 account for the possibility that if the non-liquidated loans
22 that are at issue, at issue in this proceeding are not going
23 to be returned to the Lehman estate as part of the
24 repurchase mechanism that it may be appropriate to provide a
25 credit to account for the fact that they are not getting the

1 loans back and the loans remain with the trusts.=

2 Q Correct. That's my -- at least my understanding from
3 counsel that that, you know, could potentially be the case.
4 And if it is then it might be economically appropriate. It
5 would be a compensation for the expected cash flows that
6 could be generated by the loan.

7 Q And we will get into that and hear more fully about it
8 from Dr. Elson, but do you have a general understanding of
9 how the (indiscernible) software generates these market
10 values?

11 A Yes. I have a general understanding.

12 Q Can you explain?

13 A It's essentially forecasting, making a forecast of
14 expected cash flows and then discounting those back to the
15 present.

16 Q And the Court asked you before what possible scenarios
17 there could be on any given non-liquidated loans. I believe
18 you discussed that the loan going into default and being
19 liquidated would be one. Would other scenarios are there?

20 A Well, there are the scenarios that the loan prepays,
21 the loan continues to make payments, or the loan defaults.
22 And typically this is kind of referred to as a competing
23 hazard situation. In other words, there are different
24 outcomes that could occur each month. And if the loan
25 prepays or defaults that's the end of the loan, but if it

1 continues to survive then the borrower makes payments.

2 Q Now moving on to your rebuttal report if we could put
3 TRDX-285 on the screen again.

4 (Pause)

5 Q Can you walk us through what it was in Dr. Cornell's
6 report that you addressed in your rebuttal report?

7 A Again, Dr. Cornell was asked to make two assumptions
8 which, to be clear, these are assumptions that he adopted
9 from counsel that one, that the law certificates and
10 corporate expense logs were necessary to calculate the
11 reliable purchase price.

12 And that, second, that the trustees had not put
13 forward a reliable measure of the market value of the loan.
14 Therefore, the purchase price for the non-liquidated loans
15 should be set to zero.

16 Q And how are these assumptions relevant to Dr. Cornell's
17 affirmative report?

18 A They affect the value of what he calls the compensable
19 claims. He basically removes them from a purchase price
20 calculation saying that effectively they have a value of
21 zero.

22 MS. BLACK: Let's have TRDX-299, please.

23 BY MS. BLACK:

24 Q You mentioned loans with compensable claims. Can you
25 please elaborate on what you mean by that?

1 A Okay. So this is a phrase or a term that Dr. Cornell
2 used in his report. So at the bottom the 1,076 loans, these
3 are loans where the plan administrator agrees with the
4 trustee that there is some material breach associated with
5 the loan and accepts the purchase price that had been put
6 forward as of January 1st -- or January of 2017.

7 Q And are the 1,076 loans that Dr. Cornell refers to as
8 loans with compensable claims liquidated loans, non-
9 liquidated loans or both?

10 A These are all liquidated loans because as I discussed
11 earlier he operates under the assumption that because the
12 allegation -- because of the allegation that the trustees
13 have not put forward a credible market value of the non-
14 liquidated loan, that its purchase price should be set to
15 zero.

16 Q Okay. And if you could just walk us briefly through
17 what we see on this table and how Dr. Cornell starts off at
18 94,566 loans being the claims submitted by the trustees
19 during the protocol process and then arrives at a subset of
20 1,076 loans as loans with compensable claims.

21 A Before I do I just want to make clear that the first
22 two columns of this table were produced in Dr. Cornell's
23 affirmative report. I have added the third column which is
24 what are the purchase prices that I have calculated
25 associated with those loans.

1 Q That you have calculated --

2 A Oh, sorry.

3 Q -- or that Dr. --

4 A No. Let me --

5 Q -- Cornell has calculated?

6 A That the trustee had calculated as of January of 2017.

7 I misspoke.

8 So we start off with 94,566 loans and my understanding
9 is that these were the loans that were initially submitted
10 as claims in the protocol process. There were various loans
11 that were removed from the protocol process either because
12 of the trustees' actions or the plan administrator's
13 actions. So that will get us to the at issue mortgage loans
14 of roughly 91,000.

15 From this 91,000 Dr. Cornell removes 30,000 loans, so
16 that would be the first yellow highlighted line that
17 allegedly don't have sufficient documentation. Of those
18 30,000, 15,000 are removed because they don't -- the loan
19 files didn't contain a loss certificate or a corporate
20 expense log.

21 There were then 60,000 loans removed because the plan
22 administrator did not accept the fact that they were -- or
23 contested the fact that they were breaching loans. When --
24 he goes on to then add and subtract various loans, including
25 in the second yellow highlighted loan. 44 loans, these are

1 all non-liquidated loans, which as I've said before, he set
2 the purchase price of those loans equal to zero to arrive
3 then at 1,076 loans.

4 Q And in arriving at his purchase price for these
5 1,076 loans, I believe you mentioned that Dr. Cornell used
6 purchase price as put forward by the trustees in January of
7 2017?

8 A That is correct.

9 Q And does Dr. Cornell in any way challenge or take
10 issue with the Trustee's purchase price?

11 A Not to my knowledge, no.

12 Q More specifically, does he take issue with any
13 interest that may be embedded in such purchase price?

14 A Again to my knowledge, Dr. Cornell does not break
15 out \$236 million associated with the mortgage loans with
16 compensable claims -- does not break that out into separate
17 components. These are liquidated loans and he is just using
18 the purchase price associated with those loans.

19 Q Okay. So I would like to start off with his first
20 assumption that a reliable purchase price cannot be
21 calculated without a loss certificate or corporate expense
22 log.

23 A Yes.

24 Q I believe you mentioned that this is an assumption
25 that was provided to Dr. Cornell by counsel.

1 A Yes, that's correct.

2 Q Does Dr. Cornell justify this assumption in any
3 way?

4 A No. He provides no analysis. He accepts the
5 assumption.

6 Q And what -- when you responded to Dr. Cornell's
7 report in your rebuttal report, what did you understand the
8 plan administrator's position to be with respect to the
9 necessity of corporate expense logs and loss certificates?

10 A My understanding is that the plan administrator
11 argues that the corporate expense logs and the loss
12 certificates are necessary to both audit and to calculate a
13 reliable purchase price.

14 Q And is that position put forward in any of the
15 materials that you had reviewed?

16 A Yes.

17 Q And where would that be?

18 A I believe in the motion to expunge.

19 Q Okay. If we would put up TRDX-300, please. I have
20 put in front of you an excerpt from -- two excerpts from the
21 plan administrator's motion to expunge. Can you explain
22 whether these are the statements that informed your
23 understanding as to what the plan administrator's position
24 was with respect to these two documents?

25 A Yeah. So the first in paragraph 8 notes that the

1 trustee's failure to provide the documents, the plan
2 administrator can't evaluate whether the purchase price is
3 accurate or fair. And then in paragraph 45, and also
4 without the documents, it can't evaluate the purchase price
5 calculation nor can it break it out into its constituent
6 components.

7 Q And what is your opinion with respect to the plan
8 administrator's position as adopted by Dr. Cornell?

9 A I disagree with the position.

10 Q And why is that?

11 A As I have demonstrated both in my analysis and in
12 prior analysis in prior cases, a reliable purchase price can
13 be calculated using the monthly servicing and monthly
14 trustee remittance reports. The loss certificates and
15 corporate expense logs are, in fact, static documents that
16 occur when the loan is liquidated. And they do not account
17 for subsequent recoveries, subsequent losses that occur on
18 the loan post the time that the loss certificate was issued.
19 So, in fact, the loss certificate is in some ways an
20 outdated document for, in fact, the majority of the loans.
21 And looking at the loans, roughly 80 percent of the loans
22 for which I calculated purchase prices, had some type of
23 trailing recovery or expense.

24 Q You just mentioned trailing recoveries and
25 expenses, and you refer to them as subsequent recoveries and

1 expenses. Can you elaborate what you mean by that? What
2 type of expenses and recoveries would there be after the
3 liquidation of the subject property?

4 A Well, I can't speak to any individual loan. I can
5 just say first that I have seen this pattern across hundreds
6 of trusts that the liquidation event in some sense isn't the
7 final say on how much the loan generates in terms of a
8 realized loss. This could be because of a later insurance
9 recovery. It could be because there was a tax dispute, you
10 know, that the borrower had with the taxing authority, that
11 was resolved in one way or another after liquidation. I
12 mean, there could be a whole host of different types of
13 events. It could be just administrative practices.

14 But what I can say for sure is in the data, this is a
15 regular occurrence. And the monthly servicing data and
16 monthly trustee reports reflect this information.

17 Q And how long after the liquidation event, and after
18 a loss certificate is issued by the servicer, can such
19 subsequent recoveries and expenses occur?

20 A Empirically in the data, it can be years. You
21 know, it's often, say, within the first year after
22 liquidation, but it can be a significant time afterwards.
23 It's somewhat idiosyncratic to the loan.

24 Q Now, I understand that you have investigated the
25 issue, what did you do?

1 A What I did was I looked at the universe of loans
2 where the plan administrator didn't contest the fact that
3 the loss certificate and the corporate expense log were in
4 the loan files. And this was the universe of 260 some odd
5 loans. I took a random sample of those loans to look at the
6 corporate expense log and the loss certificate and compare
7 what I could see there about realized loss with the data,
8 and the monthly servicing reports, and the monthly trustee
9 remittance reports.

10 Q And what did you find based on your investigation?

11 A What I found was for some of the loans, they
12 matched up with -- almost perfectly, within plus or minus
13 \$5. And that for the majority of the loans, I could
14 reconcile the two, but only after accounting for the
15 subsequent losses and/or recoveries that occurred post the
16 date of the loss certificate. For some, I couldn't
17 perfectly reconcile the numbers in the two data sources, but
18 the differences were somewhat de minimis. It was about one
19 percent of the total realized loss.

20 Q Could we have TRDX-301, please? Dr. Snow, does
21 this slide accurately summarize your findings with regards
22 to this sample?

23 A It does. So for -- of the 160 loans, again,
24 roughly half -- a little less than half, 74, the realized
25 amounts were identical. What was reported on the loss

1 certificate and what was reported in the monthly servicing
2 data and/or monthly trustee remittance reports? For roughly
3 65 loans, I could reconcile within \$100 based upon
4 subsequent gains or losses associated with those loans that
5 were not included in the loss certificate or corporate
6 expense log. And for 14 loans, I couldn't reconcile things
7 within \$100. But as I mentioned earlier, it was roughly --
8 the difference -- total difference between the two data
9 sources was roughly one percent. And for 6 loans, the loss
10 certificate didn't exist in the loan file.

11 Q And having conducted this investigation, and also
12 based on your prior experience in other put back matters,
13 what opinion did you form with respect to the utility of
14 corporate expense logs and loss certificates in validating
15 or calculating a purchase price?

16 A Basically, I had not seen loss certificates used in
17 any prior case that I had been involved with. After
18 investigating the issue, I don't believe that there is
19 utility in them above and beyond the information that is
20 contained in the data published by the master servicer. And
21 in fact, my analysis shows that the data published by the
22 master servicer is more current, takes into account the
23 subsequent gains and losses associated with the loan. And
24 as I said before, I feel comfortable with that data given
25 that it is relied upon by market participants.

1 Q Now, you provided this analysis in your rebuttal
2 report. What was the response of the plan administrator's
3 experts to your investigation on this issue: both in numbers
4 and generally the opinions that you formed in this regard?

5 A To the best of my knowledge, no one has rebutted
6 these findings.

7 Q Are you aware that in his testimony to this Court,
8 Mr. Trumpp, the plan administrator's fact witness, stated
9 that loss certificates and corporate expense logs are
10 necessary because they break out in granularity things such
11 as the interest or any losses that may be attributable to
12 the servicer, for instance the servicer taking too long to
13 foreclose on a property?

14 A Yes. I'm aware of the arguments.

15 Q And what do you make of -- focusing on the first
16 point, what do you make of Mr. Trumpp's statements that
17 these documents are necessary to determine the borrower
18 interest component of the purchase price?

19 A First of all, as I demonstrate in my supplemental
20 report, they are not necessary. That that can be -- those
21 components can be broken out using the monthly loan level
22 servicing data and the monthly trustee remittance reports.
23 Second, with respect to the servicer errors, I don't know
24 quite what to make of this particular argument. I
25 understand that these documents might be able to illuminate

1 how long it took to liquidate a loan and some actions that
2 the servicer took, but I have not seen any factual evidence
3 or any expert evidence regarding whether or not there were,
4 in fact, servicing errors. And if so, how would one go
5 about using that information to determine whether the
6 servicer made an error or not.

7 In particular, when Dr. Cornell submitted his
8 affirmative report -- if we could go back to the table from
9 Dr. Cornell, the report with the column that I added to it.

10 Q Sure. That is TRDX-299, please.

11 A So from the \$236 million, at the bottom here, Dr.
12 Cornell subtracted 3 to \$4 million for what he termed a
13 servicing error offset. When I saw that initially in his
14 affirmative report, I looked in his backup materials and saw
15 nothing that described how, nor illuminated how that was
16 calculated. And there was nothing in the text of his
17 report. There was nothing in his backup materials. So I
18 asked counsel to ask -- counsel for the trustees to ask the
19 counsel for the plan administrator for that backup material
20 so I could analyze how this was -- this number was arrived
21 at.

22 After what I understand was some back and forth, I was
23 shown a letter from counsel for the plan administrator that
24 said that they were dropping their -- that amount for
25 service -- that servicer error offset. And that's what --

1 that's the only evidence I have seen regarding whether or
2 not there were servicer errors.

3 Q And so based on that letter, was it your
4 understanding that that argument was still in the case?

5 A I -- given that I had not seen any factual evidence
6 or any expert evidence, I had no reason to believe that that
7 argument was still in the case.

8 Q Let's just take a look at the letter. Can we have
9 TRX-894, please? Is this July 14, 2017 letter, the document
10 that you had just referred to?

11 A It is.

12 Q And can we please move to page 3 of the document?
13 Can you point us to the language that you took to mean that
14 the service error argument had been abandoned?

15 A Right. It's the first paragraph right after number
16 four, and in particular the last sentence, that the plan
17 administrator confirms it no longer plans to apply the
18 servicer error offset to the aggregate claim value of debt
19 applied in the Cornell report.

20 Q Thank you. And going back to the first statement
21 made by Mr. Trumpp with regard to loss certificates and
22 corporate expense logs being necessary in order to
23 disaggregate the interest component of the purchase price,
24 to the extent it's included in the purchase price. You
25 mentioned that you calculated interest in the context of

1 your supplemental report?

2 A That is correct?

3 Q And in the context of calculating -- in calculating
4 interest, including its individual components and supped
5 components in your supplemental report, did you look at a
6 single loss certificate or corporate expense log?

7 A I did not.

8 Q And --

9 A I would also note that Dr. Cornell reviewed my
10 calculations of determining the interest components, said
11 that the approach was reasonable and it would be the one
12 that he would adopt. We had some minor disagreements which
13 I think we'll talk about later.

14 Q And did that minor disagreement have anything to do
15 with corporate expense logs and loss certificates?

16 A It did not.

17 Q And going back to this issue of loss certificates
18 and corporate expense log, based on the work that you have
19 done in this matter, as well as your general expertise in
20 put back matters, what if any purpose -- in your opinion,
21 what if any purpose can these documents serve with respect
22 to the calculation of purchase price or any of its
23 constituent components that cannot be accomplished by
24 looking at the loan level data found in the master servicers
25 monthly performance data or trustee remittance reports?

1 A Based upon my prior experience in over 25 put back
2 matters, and my examination of the data here, I don't
3 believe that there is anything above and beyond than what's
4 in the loan level servicing data and trustee remittance
5 reports that would be necessary to either calculate the
6 purchase price or to back out individual components.

7 Q Now, I would like to move to the second assumption
8 that we saw in -- with respect to Dr. Cornell's affirmative
9 report, which was the assumption that led Dr. Cornell to set
10 the purchase price for non-liquidated loans at zero. Can we
11 please have TRX-939, please? I've put Dr. Cornell's
12 affirmative report up on the screen. Dr. Snow, do you
13 recognize this document?

14 A I do.

15 Q Okay. And now, let's move to page 19 of the
16 document. What is your understanding as to the basis -- let
17 me rephrase that. What do you understand was the basis for
18 Dr. Cornell to set the purchase price for all the non-
19 liquidated loans at zero?

20 A I understand that the plan administrator's position
21 is as stated here, that they didn't provide sufficient data
22 to establish a claim value and that they didn't provide
23 information that could reliably estimate the loss on an
24 active mortgage loan, which that term is used in the same
25 context that I use non-liquidated claims.

1 Q And can you just point us to where it is in this
2 document that we would find the basis for Dr. Cornell's
3 assumption that the purchase price from non-liquidated
4 should be set at zero?

5 A Sure. This would be the second to last sentence in
6 paragraph 35.

7 Q Can you read it?

8 A Where he says, "Therefore, I set the claim value on
9 all active mortgage loans to zero, including the 44 active
10 mortgage loans where the plan administration concluded there
11 were approved claims.

12 Q Okay. And the premise for that is that he says
13 that valuations are not now reliable indications of the
14 current value, and because he further understands that the
15 valuations do not reliably estimate losses?

16 A That is correct.

17 Q Okay. So let's focus on the first part, that the
18 valuations provided by the trustees are not now reliable
19 indications of the current value of the active mortgage
20 loans. What is your response to that?

21 A My response -- well, to be fair, the estimates and
22 mark of value were a year old at the time of Dr. Cornell's
23 report. However, these can be easily updated and, in fact,
24 Dr. Elson's affirmative report did that, in fact. He
25 updated those values to April of 2017 to make it

1 contemporaneous with the calculations of the experts in this
2 matter.

3 So the prices -- or the values may have been stale, but
4 I don't see that as being an insuperable problem, especially
5 given that it can be updated rather easily.

6 Q And what about the second basis for the assumption
7 that led him to set the purchase price for non-liquidated
8 loans at zero, which is that the claim value is not reliable
9 -- a reliable estimate of losses?

10 A So first of all, I mean, it's sort of -- as an
11 initial matter, I have not seen any evidence that, you know,
12 proffered by any of the experts that the losses that are
13 estimated as part of Dr. Elson's analysis, are estimated
14 reliably. I have not seen any analysis. I have not seen
15 any factual evidence.

16 THE COURT: Can I interrupt for a moment? And this
17 is not your fault. This is -- well, my fault, but also that
18 the witnesses aren't exactly going all in order. So I'm
19 hearing about things that I haven't heard about yet. So for
20 what are being referred to in this paragraph that I'm
21 looking at on the screen as active mortgage loans, right?

22 THE WITNESS: Yes.

23 THE COURT: Those are non-liquidated loans?

24 THE WITNESS: Correct.

25 THE COURT: And in some instance, the borrower may

1 be paying.

2 THE WITNESS: Yes.

3 THE COURT: And in some instances, not.

4 THE WITNESS: Correct.

5 THE COURT: So, therefore, is the number that I
6 guess it's you supplied by Dr. Elson, maybe it's Dr.
7 Cornell, I don't know. But the number that's being used to
8 represent the value that should be netted against the
9 purchase price, right? The expected cash flow is one way
10 that you've described it.

11 THE WITNESS: Yes.

12 THE COURT: For an active performing loan where Joe
13 Borrower is paying month after month, is that number the --
14 I'll use the word appraised in a lay sentence -- the
15 appraised value of the property, or is that number a
16 discounted cash flow of the remaining mortgage payments on
17 the assumption that Joe Borrower is going to continue to
18 make the payments. In theory, you're the economist, I'm
19 not. Those should kind of converge, maybe or maybe not. In
20 some instances, yes, but we're talking about a real estate
21 market that's subject to a lot of different factors.

22 So the -- my main question is what are we talking
23 about? Are we talking about the collateral value or are we
24 talking about a discounted cash flow of what we think Joe
25 Borrower is going to do?

1 THE WITNESS: So my answer would be both. So let
2 me just try to do a --

3 THE COURT: And if I -- if that question doesn't
4 make sense, tell me one that does.

5 THE WITNESS: No, it makes perfect sense.

6 THE COURT: Okay.

7 THE WITNESS: Let me do a rather stylized simple
8 example.

9 THE COURT: Sure.

10 THE WITNESS: Suppose that there was a 50 -- it's
11 just a one period mortgage to make life easy for us.

12 THE COURT: Okay.

13 THE WITNESS: Now, let's say that there's 50
14 percent probability that the borrower makes the mortgage
15 payment and a 50 percent probability that they don't.
16 Right? Then you might say that -- and let's say the
17 mortgage payment is \$1,000. So we might say in that
18 instance that the expected mortgage payment is \$500. Okay?
19 Now, it becomes more complicated when we start adding in
20 more periods and more things can happen, right? That
21 there's a probability that the borrower could prepay, say
22 refinance the mortgage. There's a probability that they
23 could continue to make mortgage payments. There's a
24 probability that they could become delinquent. There's a
25 probability that they could default. Those are all rolled

1 in to calculating the expected cash flow.

2 So again coming back, the answer is it's taking
3 into account all of those things. Now, if the borrower has
4 been, you know, never delinquent and is making payments,
5 then the probability that they're going to become delinquent
6 and that they're going to default is relatively low compared
7 to someone who has defaulted in the past.

8 THE COURT: So let me ask a follow up, though. If
9 -- we now have a borrower whose home is in a recovered real
10 estate market. So the collateral -- there's equity.

11 THE WITNESS: Yes.

12 THE COURT: Joe Borrower has equity. SO whether or
13 not he pays or he doesn't pay, the lender is going to be
14 made whole. In my hypothetical, the lender is going to be
15 made whole because if we got the property appraised, there
16 would be two to one debt to collateral -- loan to value
17 ratio, however you want to look at it. There's
18 unquestionably equity value.

19 So wouldn't in that instance, we don't have to
20 worry about what Joe Borrower may or may not do, the
21 borrower is going to be made whole at the end of the day
22 because there's so much collateral value?

23 THE WITNESS: Yes. I -- if we just sort of extract
24 what the probability of housing prices do in the future.
25 But yeah --

1 THE COURT: Right.

2 THE WITNESS: -- assuming that they just kind of
3 nice, steady increase into the future, yes, then it becomes
4 sort of the discounted, you know, stream of payments and/or
5 a -- you could view it as a pre-payment at some point
6 because --

7 THE COURT: Right.

8 THE WITNESS: -- the loan liquidates the collateral
9 value as sufficient to pay off the rest of the mortgage.

10 THE COURT: Right.

11 THE WITNESS: So yes, that would --

12 THE COURT: Equity commission sufficient to take
13 care of any problem that --

14 THE WITNESS: Yeah. That would be part of the
15 mortgage value. And then you would expect to have a
16 relatively higher mortgage value than someone that you think
17 is going to default.

18 THE COURT: Thank you. Thank you.

19 MR. COSENZA: Your Honor, could I have one --

20 THE COURT: Yeah.

21 MR. COSENZA: -- clarification just to --

22 THE COURT: Sure.

23 MR. COSENZA: -- because of the order of this. The
24 Dr. Cornell report that's being referred to here was part of
25 the initial round of expert reports.

1 THE COURT: Yes.

2 MR. COSENZA: It was done on June 1st.

3 THE COURT: Okay.

4 MR. COSENZA: So two things just to clarify. The
5 chart that's here -- first of all, it doesn't have -- the
6 chart that Dr. Cornell used didn't have the purchase prices.
7 But also the loans at issue included all of the loans that
8 were put through the protocol. And part of the issue that
9 Dr. Cornell was explaining in his report was during the
10 protocol process, the trustees for active loans had taken
11 different approaches as to how to value them. At one point,
12 sought the entire purchase price without any offset based on
13 any model. There are problems with that model that we'll
14 talk about later.

15 THE COURT: Okay.

16 MR. COSENZA: But there is -- you know, there's
17 something in here about the chronology. This is -- just to
18 be clear, Dr. Cornell's June 1 report is before -- or
19 contemporaneous with the Elson and Snow reports. So this is
20 -- just to put that chronology --

21 THE COURT: Okay. As I said, you know, we're
22 running before we walk in some instances. So I'm trying to
23 follow it as best as I can.

24 MR. COSENZA: Thank you, Your Honor.

25 THE COURT: Thank you. Okay, thank you. Go ahead.

1 BY MS. BLACK:

2 Q The plan administrator -- are you aware that the
3 plan administrator's position is that the values calculated
4 by Dr. Elson are too low?

5 A Yes. I have seen the argument made.

6 Q Okay. And if one were to assume that these are
7 great loans and they are worth 100 percent of their par
8 value, simply \$1 on each dollar --

9 A Yes.

10 Q -- would that lead and allow Dr. Cornell to
11 conclude that the net purchase price for the non-liquidated
12 loans should be zero?

13 A No, that would not be the case.

14 Q Can you explain that, please?

15 A Yes. I calculate the net -- well, if we -- let's
16 go to the spreadsheet that had the calculations of the net
17 purchase price.

18 Q Okay. That is 690 -- TRX-690.

19 MR. COSENZA: Your Honor, I hate to do this, but I
20 think this is -- you know, I've read the report several
21 times. I don't recall this issue -- this question being
22 within -- covered by Dr. Snow in his expert reports, the
23 question that the values calculated by Dr. Elson are too
24 low. I don't think there's anything in Dr. Snow's report
25 that talk about the challenges to Dr. Elson's work. I think

1 that's something that Dr. Elson will have to explain when
2 he's here as an expert.

3 THE COURT: Why don't you come up for a second?

4 (Sidebar off the record)

5 THE COURT: Just to be clear, I did cancel my 4:15
6 call. So I can keep going, but I don't want to keep going
7 if folks are getting tired, or need a break, or what have
8 you. So whenever folks are ready. Are you doing okay, Dr.
9 Snow?

10 THE WITNESS: I'm doing fine. Thank you.

11 THE COURT: Okay. Are you okay? Do you need a
12 break?

13 MS. BLACK: Yes. May I proceed?

14 THE COURT: Yes, go ahead.

15 BY MS. BLACK:

16 Q Dr. Snow, I had previously had asked you a
17 question. So if one were to assume that -- in an ideal
18 world that the non-liquidated loans that you calculated
19 purchase price for where -- are valued at 100 percent of
20 par.

21 A Yes.

22 Q Would that justify setting the purchase price if
23 you calculated from a non-liquidated nulls at zero?

24 A No, it would not. There would still be a
25 significant net purchase price even if you made a somewhat

1 severe assumption that the loans should be valued at par.

2 Q And can you elaborate on that in terms of numbers?

3 A Yes. So if we can go back to the spreadsheet where
4 I calculated the net purchase price.

5 Q That would be TRX-690.

6 A Okay. So if we highlight column F, you'll be able
7 to see that the sum of that is roughly \$3 billion. So that
8 is what Dr. Elson calculates the value of these, again
9 roughly 15,000, on liquidated loans to be. Dr. Elson also
10 reported that that number represented 72 percent of par or
11 of the current principal balance associated with these
12 loans.

13 So it's rather now a straightforward mathematical
14 operation to say, well, suppose it's not valued at 72
15 percent, suppose it's valued at 100 percent. And that would
16 just be equivalent to taking this \$3 billion number and
17 dividing by .72. And then that would give you what Dr.
18 Elson would calculate if he assumed that all of the loans
19 would be worth 100 percent of par, which is almost the
20 equivalent of saying that you expect every single one of the
21 non-liquidated loans to pay off in full at some point.

22 Q And are you able to do that math in your head
23 roughly? To take --

24 A I am. So if you take 3 billion, divide by .72, you
25 come up with roughly \$4.2.

1 Q And so if the market value of the loans were \$4.2
2 billion rather than \$3 billion, what would be the net
3 purchase price on these loans?

4 A Okay. So if we go to column E and highlight that,
5 so you'll see that's 5.3 or nearly \$5.4 billion, so if you
6 were to subtract 4.2 billion, you're still left with roughly
7 \$1.2 billion.

8 THE COURT: So I've got to try to understand this.
9 So you're saying that if you -- even if the loans are valued
10 at par, you still end up with a net purchase price.

11 THE WITNESS: That's correct.

12 THE COURT: Well, that's simply because there's
13 accrued interest and expenses that haven't been paid.

14 THE WITNESS: There are multiple factors. One is
15 accrued interest. One is loan modifications, right, because
16 --

17 THE COURT: Which may or may not count based on
18 your earlier testimony.

19 THE WITNESS: Well, the principal modifications.

20 THE COURT: Principal modifications.

21 THE WITNESS: Principal modifications, servicer
22 advances. Any of those things, because again that's the
23 backward looking portion. Those are not accounted for in a
24 forward looking estimate of value because it -- imagine if
25 you were to sell that loan, the individual who took the loan

1 would not be entitled to any repayments, you know,
2 associated with servicer advances, accrued interest. That
3 would be the previous owner.

4 THE COURT: Okay. But just to tweak this question
5 slightly, if you have a loan that's valued at par and it's a
6 performing loan --

7 THE WITNESS: Yes.

8 THE COURT: -- and assuming there are no odd,
9 straggler expenses, then you would get to a net purchase
10 price of zero?

11 THE WITNESS: Roughly speaking, yes. I mean,
12 because even if you had a borrower that's current, there's
13 still some probability that some idiosyncratic event --

14 THE COURT: Right. But then we get back to my
15 earlier hypothetical about --

16 THE WITNESS: Yeah.

17 THE COURT: -- huge equity cushion and then you --

18 THE WITNESS: Yes. Yes, you have to go to -- I
19 wouldn't necessarily say an extreme condition, but --

20 THE COURT: Okay.

21 THE WITNESS: -- a somewhat unusual condition.

22 THE COURT: Okay. Thank you.

23 THE WITNESS: Okay.

24 BY MS. BLACK:

25 Q Actually, following up on that question, so if you

1 have a loan that is performing right now, but you have a
2 previous modification that resulted in a reduction of
3 principal, would that be a part of the purchase price?

4 A That would be a part of the purchase price, but it
5 would not be a part of the current market value because the
6 current market value is looking forward at -- to cash flows,
7 not looking to reimburse. So in other words, the market
8 value and the purchase price are doing two different things.
9 One is compensating for future cash flows. The other is
10 compensating for past losses.

11 Q Now, I believe you had mentioned before that you
12 had not seen any evidence indicating to you that the market
13 values calculated by Dr. Elson that you use as an offset to
14 your purchase price were unreliable. Have you seen any
15 evidence to the contrary?

16 A I have. I've seen some evidence that indicates
17 that. These non-liquidated loans, in fact, have suffered
18 losses and will continue to suffer losses.

19 Q And what is the evidence that you have seen?

20 A Well, first it's just my review of the data in
21 calculating the purchase prices. But the second is
22 testimony put forward by Professor Fischel.

23 Q And can you elaborate on that?

24 A Yes. Professor Fischel estimated or calculated the
25 historic losses on 415,000 loans. And that was every loan

1 that was in a covered trust associated with the bankruptcy.
2 A subset of those loans are the liquidated loans and the
3 non-liquidated loans for which I calculated purchase prices.
4 And Dr. Fischel calculated the historic and estimated the
5 future losses on each and every one of these loans.

6 THE COURT: Mr. Cosenza?

7 MR. COSENZA: Again, Your Honor, this is not
8 covered in either of Dr. Snow's reports. Professor Fischel
9 issued his report on -- at the end of July. There was a
10 full chance for Dr. Snow to rebut and he did not. So this
11 is, in essence, a new opinion issued by Dr. Snow.

12 THE COURT: Response?

13 MR. BLACK: Dr. Snow is not issuing an opinion. He
14 took numbers put forward by Dr. -- Professor Fischel. I
15 don't think he take issue with those numbers. All he did
16 was to look at those numbers, extract out of that pool,
17 which is a much larger universe of loans than the loans that
18 were the subject of Dr. Snow's analysis to see what the
19 numbers were that Professor Fischel came up with for those
20 loans.

21 I think that not only does he not disagree with
22 Professor Fischel, he actually agrees there was no reason
23 for him to put in a reply to Professor Fischel because there
24 was nothing in Professor Fischel's calculations that Dr.
25 Snow disagrees with.

1 THE COURT: But he's describing an operation that
2 he performed that's beyond the scope of anything that was
3 written and the plan administrator hasn't had the ability to
4 examine him or test him about it. So I think this is in a
5 slightly different category than the last block of
6 questions. Did you have more on this point?

7 MS. BLACK: I do. This is the subject that we
8 attempted to venture into with Professor Fischel at his
9 deposition and we were not able to -- we were not successful
10 because, again, the spreadsheets extracting out the numbers
11 -- Professor Fischel's numbers for just the non-liquidated
12 loans that are at issue in this proceeding were put together
13 by Dr. Snow and his time. Professor Fischel did not
14 recognize them as his own spreadsheets and therefore
15 declined to testify about them.

16 My partner then -- Goldberg again attempted to talk
17 to Professor Fischel about that at trial and again, since
18 these were spreadsheets that were generated by Dr. Snow,
19 Professor Fischel was not in a position to talk about the
20 competence of those spreadsheets.

21 THE COURT: Now you -- now I'm totally lost. If
22 we're talking about spreadsheets that Dr. Snow generated
23 that Dr. Fischel couldn't figure out --

24 MS. BLACK: So Professor Fischel has one
25 spreadsheet, which is his spreadsheet of historical losses

1 for a universe of over 415,000 loans. That's the covered
2 loans and all of the covered trusts that were originally at
3 issue in this proceeding. A small subset of that remains at
4 issue. So the 76,000 loans that Dr. Snow calculated at --

5 THE COURT: Time out.

6 MR. COSENZA: Yeah. Can we have a sidebar, Your
7 Honor?

8 THE COURT: Yeah, I think -- this would be a good
9 time for a break. So why don't we take a 10 minute break
10 and why don't we go into the conference room and see if I
11 can follow what you're talking about. All right? 10
12 minutes, please.

13 (Recessed at 4:11 p.m.; reconvened at 4:30 p.m.)

14 THE COURT: We're going to -- please, everyone have
15 a seat. We're going to start up in a few minutes. People
16 just need a few more minutes.

17 (Pause)

18 BY MS. BLACK:

19 Q Dr. Snow, you had mentioned before some data that
20 you had seen in one of or several of Professor Fischel's
21 exhibits and let's get back to that. So can you just
22 elaborate what you had seen or summarize for us and let's
23 put TRDX-305 on the screen. Can you explain what it is that
24 you had seen in the data provided by Professor Fischel and
25 what did you do with that data?

1 A So Professor Fischel had calculated historic losses
2 and estimated future losses on a universe of 415,000 plus
3 loans. He estimated total lifetime losses to be roughly
4 21.1 billion. From his backup materials, you're able -- we
5 were able to get the breakout between what was historic
6 losses and what was estimated future losses, with the
7 historic losses on these loans being a little over 19
8 billion and estimated future losses roughly one and a half
9 billion.

10 What we did was to do nothing more than take Professor
11 Fischel's analysis and subset it down to the loans for which
12 he had calculated historic and/or estimated future losses,
13 and where we had also calculated -- where I had calculated
14 the purchase price. And that's what's in the last column.
15 So of the 415,000 loans, 15,000 plus were loans where I
16 calculated a purchase price. These again are all non-
17 liquidated loans. Of those non-liquidated loans, they have
18 suffered 770 million in historic losses according to Dr. --
19 to Professor Fischel, and were estimated to lose over 600
20 million in the future.

21 Q And I'd just like to go through technically or
22 mechanically how you pulled those numbers out of Professor
23 Fischel's data and let's -- hopefully we can get through
24 this quickly. Let's put TRX-580 on the screen. Dr. Snow,
25 what is the spreadsheet that I've just put up on the screen?

1 A This spreadsheet is a spreadsheet that was part of
2 the backup materials for Professor Fischel's affirmative
3 report.

4 Q And what does this -- what are the contents of this
5 spreadsheet?

6 A The contents in the column A lists all of the
7 loans. And if we highlight column A, we can see that there
8 are over 415,000 loans. Column C details what Professor
9 Fischel has entitled realized loss. For the liquidated
10 loans, this realized loss number is similar to the realized
11 loss number that I calculated in calculating the purchase
12 price of liquidated loans. For a non-liquidated loan, that
13 is a loss that has been recognized potentially due to a
14 modification.

15 Q And just so we are clear, so this spreadsheet
16 containing 415 -- data with respect to over 415,000 loans
17 includes both liquidated and non-liquidated loans?

18 A Yes. It includes -- if I remember correctly, you
19 know, roughly 65,000 non-liquidated loans and you know
20 350,000 liquidated loans.

21 Q And so, again, the aggregate of the historical
22 losses on these 415,000 liquidated and non-liquidated loans
23 is how much?

24 A Is 19.7 billion dollars. And that's what was
25 presented in the table on the previous slide.

1 Q Thank you. And, Your Honor, we have again a screen
2 capture of the spreadsheet in the (indiscernible) is TRDX-
3 307. Now, in terms of the non-liquidated loans, what did
4 you do with the spreadsheet?

5 A For the non-liquidated loans, I basically matched
6 the loan IDs that were within Professor Fischel's universe
7 of loans with those for which I had calculated a purchase
8 price. So this would then subset this spreadsheet down to a
9 smaller set of loans. So I want to be clear, I'm not doing
10 any calculation. I'm just using Dr. -- or Professor
11 Fischel's numbers for loans that I have calculated a
12 purchase price for.

13 Q And did you create that as a new document?

14 A Yes, I did.

15 Q Okay. Can we have TRX-586, please? And, Dr. Snow,
16 do you recognize this document and what do you recognize it
17 to be?

18 A I recognize it to be -- well, this is the subset of
19 non-liquidated loans, not the liquidated ones.

20 Q Correct.

21 A Yes. This is the subset of non-liquidated loans
22 for which I have calculated purchase price where Professor
23 Fischel had also estimated historic losses.

24 Q And what is the aggregate of the historical losses
25 on this overlap between you and Professor Fischel of 50,000

1 plus loans?

2 A Okay. If we highlight column C, you can see that's
3 772 million in historic losses.

4 Q I apologize. And again, Your Honor, we have a
5 screen capture of this in the (indiscernible) as TRDX-308.
6 Now, did every one of the non-liquidated loans at issue
7 suffer a historical loss?

8 A No, as you can readily see in the spreadsheet
9 that's up, many of the lines are zero.

10 Q And did you investigate why some of the non-
11 liquidated loans that are at issue in this proceeding have a
12 historical loss while others don't?

13 A The ones that have a realized loss --

14 MR. COSENZA: I mean, Your Honor, we just had it in
15 chambers.

16 THE COURT: Yeah, I'm going to --

17 MR. COSENZA: This is an entirely new --

18 THE COURT: I'm going to sustain the -- this
19 objection. So if you could move on to another question,
20 Ms. Black. I don't think this is within the scope for an
21 appropriate extension of Dr. Snow's opinions. Any
22 investigation that he did to explain the difference between
23 loans that had a realized loss and loans that did not.

24 MS. BLACK: Okay. Thanks. So I will ask a
25 different question.

1 THE COURT: Please.

2 BY MS. BLACK:

3 Q Do you have an understanding of what the realized
4 loss with respect to those non-liquidated loans that do have
5 a realized or do have entry into realized loss
6 (indiscernible), do you have an understanding of what that
7 relates to?

8 A Yes. My understanding is that these are principal
9 modifications.

10 Q Okay. And now going back to TRDX-305, which is the
11 summary slide. We have now covered the historical losses.
12 I would like to talk about the estimated future losses now
13 and how you went about extracting the \$626 million number
14 from the larger \$1.4 billion, can you explain that, please?

15 A Sure. So again, Dr. Fischel or Professor Fischel
16 produced a spreadsheet in his backup materials that had the
17 components or the output from the ADCO loan dynamics program
18 that forecasted the future losses of these loans. He also
19 included computer code that described how to put those
20 components together to get the forecasted loss for each
21 loan.

22 So I took his spreadsheet and his code and put the two
23 together for the 15,629 (indiscernible).

24 Q Okay. And if we could put up TRX-591. Dr. Snow,
25 is this the resulting spreadsheet that you created with the

1 formula and the ADCO output?

2 A Yes.

3 Q And what -- go ahead.

4 A So column A through J are taken directly from the
5 ADCO output that Dr. Fischel provided. I have calculated
6 column X, which is per the formula that the computer code
7 said columns A through J should be combined together to get
8 the cumulative loss for each loan.

9 THE COURT: Where did that computer code come from?

10 THE WITNESS: From Dr. Fischel's backup material.

11 MR. COSENZA: This is the same issue. This is --
12 we never had a chance to cross-examine his opinion that's
13 subsequent to the issuance of his report.

14 THE COURT: I thought all we were going to do was
15 filter the spreadsheet. But now we're applying a new
16 operation --

17 MR. COSENZA: Yes.

18 THE COURT: -- to the spreadsheet that goes beyond
19 filtering. So --

20 MR. SHUSTER: Can we just have a moment?

21 THE COURT: Yes.

22 (Pause)

23 BY MS. BLACK:

24 Q Dr. Snow, after your deposition and after the
25 expert's (indiscernible) was concluded, you submitted a

1 supplemental report, correct?

2 A That is correct.

3 Q Why?

4 A I was asked by counsel to look into issues related
5 to accrued and unpaid interest.

6 Q And do you have an understanding as to why you were
7 asked to look into issues related to accrued and unpaid
8 interest?

9 A I do. I understand there is a dispute about how
10 interest should be treated on this matter. So I created
11 various breakouts of the interest component that was part of
12 either accrued and unpaid interest before liquidation
13 proceeds or after liquidation proceeds into various buckets
14 to allow the Court options on how to treat the interest
15 component.

16 Q Can we have TRDX-285, please? Can you walk us
17 through the summary of your opinions that you formed in
18 connection with your supplemental report?

19 A Yes. So first of all, that the purchase price, as
20 we talked about earlier, the interest -- the accrued, unpaid
21 interest that the borrower failed to pay is part of the
22 contractual purchase price definition that is listed in the
23 governing agreements. I have broken out the interest rate
24 component, especially for liquidated loans. I had already
25 done that for non-liquidated loans. That was part of my

1 affirmative report. But for liquidated loans, I had broken
2 it out. And I've also demonstrated that for the majority of
3 the liquidated loans at issue for which I've calculated a
4 purchase price, the purchase price doesn't contain any
5 accrued, unpaid interest.

6 In other words, the liquidation proceeds were
7 sufficient to retire the servicing advances, as well as the
8 accrued unpaid interest.

9 Q If the Court were to determine that interest is an
10 impermissible component of the purchase price and removed it
11 from the purchase price, how would that affect the trusts
12 and investors?

13 A That would be a loss to the trust and the
14 investors. Those were cash flows that --

15 THE COURT: Okay. Hold on. Hold on. First of
16 all, I don't understand the question in terms of using the
17 word interest. Second of all, I don't know that Dr. Snow
18 has been qualified as an expert to give a view as to how the
19 scenario that you described would affect the waterfall in
20 the trust.

21 So let's go back to the predicate question which is
22 when you say taking out interest, could you be more precise?
23 In other words, where -- the plan administrator has made a
24 claim in broad-brush that the claim of the trustee's
25 includes -- impermissibly includes post-petition interest.

1 MR. COSENZA: Yes.

2 THE COURT: Yes?

3 MR. COSENZA: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. COSENZA: Or unmatured interest.

6 THE COURT: Or unmatured interest?

7 MR. COSENZA: Yes.

8 THE COURT: Okay. So I don't exactly know what
9 that means. But what you're saying through Dr. -- your
10 questions to Dr. Snow and Dr. Snow has confirmed, is that
11 the only interest that he's talking about is interest on
12 loans -- accrued interest on loans, right?

13 MS. BLACK: The interest that is a component -- one
14 of the building blocks of the purchase price.

15 THE COURT: Of the purchase price. Okay. So --

16 MR. SHUSTER: I have a different suggestion. My
17 suggestion is we break until --

18 THE COURT: Tomorrow?

19 MR. SHUSTER: Because it's a new topic and -- yeah,
20 that we --

21 THE COURT: Okay.

22 MR. SHUSTER: -- since we're only going for less
23 than another 15 minutes.

24 THE COURT: Okay. Let's go -- just if you look --
25 Ms. Black if you go -- my stumbling block before anybody

1 else spoke was in your question, you referred to interest.
2 And to me, there was just an ambiguity in that question. So
3 that's what I would leave you with. And then you can decide
4 where you want to go tomorrow.

5 MR. COSENZA: And, Your Honor, just to be clear.

6 THE COURT: Yeah.

7 MR. COSENZA: Sorry. To be clear on the record,
8 the question that elicited my objection beyond ambiguity was
9 this new opinion --

10 THE COURT: About the effects.

11 MR. COSENZA: -- of talking about the interest of
12 the trust, and certificate holders, and that was a new
13 opinion.

14 THE COURT: I mean --

15 MR. COSENZA: He is a calculator on the issue on
16 interest. And to go give legal opinions or opinions about
17 certificate holders and the like is --

18 THE COURT: I think that it's -- I think that Dr.
19 Snow testified this morning or early this afternoon, rather,
20 to his understanding of how cash flows work and how proceeds
21 are applied in terms of a waterfall within the trust. So he
22 clearly has an understanding as to that.

23 To the extent that this was going to seek anything
24 more along the lines of a legal opinion, that's obviously
25 not something that he's qualified to give us.

1 MR. COSENZA: Thank you, Your Honor.

2 MS. BLACK: That was not -- it was on the same
3 lines.

4 THE COURT: I understand. Okay. So it's been a
5 long day. It's 10 to 5:00. We'll call it a day. I'm going
6 to have my 9:30 people in a different courtroom, so you can
7 leave all of your stuff where it is and then we'll resume at
8 10:30 tomorrow. Dr. Snow, same rules apply overnight. All
9 right? Thank you very much.

10 (Chorus of thank you)

11 (Whereupon, these proceedings were concluded at 4:51
12 p.m.)

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Karl N. Snow	Ms. Black	81

C E R T I F I C A T I O N

We, Sherri L. Breach and Jamie Gallagher, certify that
the foregoing transcript is a true and accurate record of
the proceedings.

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